

# **Buerger Declaration Exhibit 5**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KALOMA CARDWELL, )  
Plaintiff, )  
vs. ) 19 Civ. 10256  
) (GHW)  
DAVIS POLK & WARDWELL, )  
THOMAS REID, JOHN BICK, )  
WILLIAM CHUDD, SOPHIA )  
HUDSON, HAROLD )  
BIRNBAUM, DANIEL BRASS, )  
BRIAN WOLFE, and JOHN )  
BUTLER, )  
Defendants. )  
\_\_\_\_\_ )

REMOTE DEPOSITION OF  
JOHN BICK  
located in Quogue, New York  
Tuesday, April 13, 2021

(Transcript contains Confidential and  
Highly Confidential portions -  
confidentiality designations legend at  
back of transcript)

Reported By:  
CATHI IRISH, RPR, CRR, CLVS

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 April 13, 2021</p> <p>9 9:30 a.m.</p> <p>10</p> <p>11 Remote deposition of JOHN BICK,</p> <p>12 with all participants appearing via</p> <p>13 videoconference, before Cathi Irish, a</p> <p>14 Registered Professional Reporter,</p> <p>15 Certified Realtime Reporter, and</p> <p>16 Notary Public of the State of</p> <p>17 New York.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 JOHN BICK, called as a witness,</p> <p>3 having been duly sworn by a Notary</p> <p>4 Public, was examined and testified as</p> <p>5 follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. JEFFRIES:</p> <p>8 Q. Mr. Bick, I'm going to ask you a</p> <p>9 few questions and firstly, have you been</p> <p>10 deposed before, sir?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. In an abundance of caution</p> <p>13 I'm going to run through a few preliminary</p> <p>14 things to keep in mind for this</p> <p>15 proceeding. Firstly, I'm going to need</p> <p>16 all of your answers to be verbal. Do you</p> <p>17 understand, sir?</p> <p>18 A. Yes.</p> <p>19 Q. I'm going to ask that to the best</p> <p>20 of your ability you wait until I finish</p> <p>21 the question so that nobody is talking</p> <p>22 over anybody and so the reporter is able</p> <p>23 to get everybody's answers down in their</p> <p>24 entirety.</p> <p>25 Do you understand that, sir?</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 JEFFRIES LAW</p> <p>5 Attorneys for Plaintiff</p> <p>6 1345 Avenue of the Americas</p> <p>7 New York, New York 10019</p> <p>8 BY: DAVID JEFFRIES, ESQ.</p> <p>9</p> <p>10 PAUL, WEISS, RIFKIND, WHARTON</p> <p>11 &amp; GARRISON</p> <p>12 Attorneys for Defendants</p> <p>13 1285 Avenue of the Americas</p> <p>14 New York, New York 10019</p> <p>15 BY: BRUCE BIRENBOIM, ESQ.</p> <p>16 JONATHAN KIM, ESQ.</p> <p>17 MARISSA DORAN, ESQ.</p> <p>18</p> <p>19</p> <p>20 ALSO PRESENT:</p> <p>21 ZACH CZERENDA, Veritext concierge</p> <p>22 KALOMA CARDWELL</p> <p>23 MICHAEL FLYNN</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 BICK</p> <p>2 A. Yes.</p> <p>3 Q. I'm going to ask that if at any</p> <p>4 point in time you need a break in the</p> <p>5 proceeding or you need to speak to your</p> <p>6 attorney, that you answer the question</p> <p>7 that's pending, if there is one, prior to</p> <p>8 making such a request so that we get a</p> <p>9 complete answer, question and then break</p> <p>10 if that's indeed what's necessary, all</p> <p>11 right, sir?</p> <p>12 A. Yes.</p> <p>13 Q. Also, if throughout the course of</p> <p>14 the deposition you don't understand a</p> <p>15 question that I've put to you, ask me to</p> <p>16 rephrase it and I will do so.</p> <p>17 Do you understand that as well?</p> <p>18 A. Yes.</p> <p>19 Q. All right. With that said, I</p> <p>20 believe you indicated that you've been</p> <p>21 deposed before and what was the nature of</p> <p>22 the previous proceedings in which you were</p> <p>23 deposed, Mr. Bick?</p> <p>24 A. M&amp;A transactions that I work on.</p> <p>25 Q. So were those depositions a part</p>

<p style="text-align: right;">Page 10</p> <p>1 BICK</p> <p>2 responses; correct?</p> <p>3 A. Yes.</p> <p>4 Q. Did you review those prior to</p> <p>5 today?</p> <p>6 A. Yes.</p> <p>7 Q. With respect to the court</p> <p>8 documents that you mentioned, did you</p> <p>9 review Mr. Cardwell's federal complaint</p> <p>10 prior to today?</p> <p>11 A. Yes.</p> <p>12 Q. Are you aware of whether or not</p> <p>13 there's one federal complaint by</p> <p>14 Mr. Cardwell or more than one?</p> <p>15 A. I am not aware.</p> <p>16 Q. How many versions of</p> <p>17 Mr. Cardwell's federal complaint did you</p> <p>18 review prior to today?</p> <p>19 A. I don't recollect.</p> <p>20 Q. Are you aware of the fact that</p> <p>21 there was a New York State Division of</p> <p>22 Human Rights complaint made in this matter</p> <p>23 by Mr. Cardwell?</p> <p>24 A. Yes.</p> <p>25 Q. Did you review that prior to</p>	<p style="text-align: right;">Page 12</p> <p>1 BICK</p> <p>2 documents to counsel prior to today?</p> <p>3 A. Again, I didn't provide them</p> <p>4 anything. They looked on the computer for</p> <p>5 e-mails and such. I did not provide them</p> <p>6 any hard copy.</p> <p>7 Q. Are you aware of whether or not</p> <p>8 the items that you allowed counsel to</p> <p>9 review that you just mentioned were in any</p> <p>10 way supplied to counsel?</p> <p>11 A. I don't understand the question.</p> <p>12 Q. Did counsel take possession of</p> <p>13 the items that you indicated were reviewed</p> <p>14 in a digital format?</p> <p>15 A. I do not know because I was not</p> <p>16 part of the e-mail reviews digitally.</p> <p>17 Q. So you yourself did not</p> <p>18 affirmatively provide counsel with any</p> <p>19 digital copies or ensure the forwarding of</p> <p>20 any of the digital information to counsel</p> <p>21 that you mentioned was reviewed; is that</p> <p>22 correct?</p> <p>23 A. Not to my recollection.</p> <p>24 Q. And what type of documents are we</p> <p>25 talking about? You mentioned e-mails?</p>
<p style="text-align: right;">Page 11</p> <p>1 BICK</p> <p>2 today's testimony?</p> <p>3 A. I have no recollection of</p> <p>4 reviewing that complaint.</p> <p>5 REDACTED</p> <p>6 REDACTED</p> <p>7 REDACTED</p> <p>8 REDACTED</p> <p>9 REDACTED</p> <p>10 REDACTED</p> <p>11 REDACTED</p> <p>12 Q. Did you yourself participate in</p> <p>13 the gathering of any documents related to</p> <p>14 this litigation prior to today?</p> <p>15 A. Counsel came to see me and asked</p> <p>16 for any documents that I had so that was</p> <p>17 the extent of my participation.</p> <p>18 Q. The documents -- with respect to</p> <p>19 that inquiry, did you, in fact, provide</p> <p>20 documents to counsel?</p> <p>21 A. I had no hard copy to deliver to</p> <p>22 counsel. All of my documents were e-mails</p> <p>23 and digital that they could look at</p> <p>24 through the systems.</p> <p>25 Q. And did you provide those</p>	<p style="text-align: right;">Page 13</p> <p>1 BICK</p> <p>2 What else? Would these have been other</p> <p>3 documents that you yourself generated?</p> <p>4 A. The only other thing I can think</p> <p>5 of is the review forms. I did one interim</p> <p>6 review of Kaloma which I put into the</p> <p>7 system, and that would be the only other</p> <p>8 thing aside from e-mails that I can think</p> <p>9 of.</p> <p>10 Q. Have you generated or authored</p> <p>11 any memoranda to memorialize any of the</p> <p>12 complaints or details related to this</p> <p>13 litigation prior to today?</p> <p>14 MR. BIRENBOIM: Objection to</p> <p>15 form.</p> <p>16 THE WITNESS: Not to --</p> <p>17 MR. BIRENBOIM: You can answer.</p> <p>18 THE WITNESS: Not to my</p> <p>19 recollection.</p> <p>20 BY MR. JEFFRIES:</p> <p>21 Q. Have you made any contemporaneous</p> <p>22 notes with respect to Mr. Cardwell prior</p> <p>23 to your testimony here today?</p> <p>24 A. No.</p> <p>25 Q. And as you sit here today, do you</p>

4 (Pages 10 - 13)

<p style="text-align: right;">Page 26</p> <p>1 BICK</p> <p>2 these other e-mail addresses that you've</p> <p>3 mentioned; is that correct?</p> <p>4 A. I did not.</p> <p>5 Q. In 2014 through 2018, was your</p> <p>6 work e-mail address a part of any internal</p> <p>7 Listservs?</p> <p>8 A. I believe so, yes.</p> <p>9 Q. Do you recall which ones?</p> <p>10 A. I do not.</p> <p>11 Q. Was your work e-mail address a</p> <p>12 part of the Career Advisors Listserv?</p> <p>13 A. I do not know.</p> <p>14 Q. Well, do you recall or do you get</p> <p>15 e-mails sent from the Career Advisors</p> <p>16 Listserv?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. Would that have been the case</p> <p>19 during 2014 through 2018 as well?</p> <p>20 A. I believe, yes.</p> <p>21 Q. Is there any reason that you do</p> <p>22 not believe you would have received</p> <p>23 e-mails from the Career Advisors Listserv</p> <p>24 in 2014 through 2018?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 28</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 A. I do not know.</p> <p>3 Q. Do you have any reason to dispute</p> <p>4 that is the e-mail address?</p> <p>5 A. I do not.</p> <p>6 Q. You previously served as the head</p> <p>7 of Davis Polk's corporate department,</p> <p>8 global head of the mergers and</p> <p>9 acquisitions practice, and a member of the</p> <p>10 firm's three-person management committee;</p> <p>11 is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. I want to go through each of</p> <p>14 these positions.</p> <p>15 REDACTED</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p style="text-align: right;">Page 27</p> <p>1 BICK</p> <p>2 Q. And the Career Advisors Listserv</p> <p>3 uses the e-mail address</p> <p>4 cap.advisors.ny@davispolk.com; is that</p> <p>5 correct?</p> <p>6 A. I do not know.</p> <p>7 Q. Do you have any reason to dispute</p> <p>8 that the e-mail address I just read to you</p> <p>9 is the Career Advisors Listserv e-mail</p> <p>10 address?</p> <p>11 A. No.</p> <p>12 Q. Was your work e-mail address also</p> <p>13 a part of the NYMA Partners Listserv?</p> <p>14 A. I do not know.</p> <p>15 Q. Are you familiar with whether or</p> <p>16 not there is an NYMA Partners Listserv?</p> <p>17 A. I do not know the specific names</p> <p>18 of the Listservers. If you're referring</p> <p>19 to a Listserv for M&amp;A partners in</p> <p>20 New York, there is one and I'm part of</p> <p>21 that.</p> <p>22 Q. Are you familiar with whether or</p> <p>23 not the e-mail address for the Listserv</p> <p>24 that you mentioned that you're a part of</p> <p>25 is nyma.partners@davispolk.com?</p>	<p style="text-align: right;">Page 29</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 Q. Was your departure from that</p> <p>3 position related to any formal</p> <p>4 investigation that occurred at Davis Polk?</p> <p>5 A. No.</p> <p>6 Q. Was your departure from that</p> <p>7 position related to any informal</p> <p>8 investigations that occurred at Davis</p> <p>9 Polk?</p> <p>10 A. No.</p> <p>11 Q. Did any individual or group of</p> <p>12 individuals ask you to stop -- ask you to</p> <p>13 step down from that position?</p> <p>14 A. No.</p> <p>15 Q. Can you explain why you're no</p> <p>16 longer the head of Davis Polk's corporate</p> <p>17 department?</p> <p>18 A. I had served three terms. Tom</p> <p>19 Reid, who was the managing partner and on</p> <p>20 the management committee with me, took a</p> <p>21 job at our client and was stepping down</p> <p>22 from the management committee. The three</p> <p>23 of us who were on the management committee</p> <p>24 at the time, Tom, Jim Rouhandeh and</p> <p>25 myself, we decided the best course of</p>

8 (Pages 26 - 29)

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1 BICK - CONFIDENTIAL  
 2 action with Tom leaving as managing  
 3 partner was to disband the existing  
 4 management committee, hold an election for  
 5 a new management committee, which would be  
 6 one year prior to our three-year term  
 7 ending for that cycle, and so our terms  
 8 ended.  
 9 I personally chose not to run  
 10 again because I was planning to retire in  
 11 2021, and if I ran for election and was  
 12 reelected, I would have had a three-year  
 13 term that would have taken me past my date  
 14 of retirement, so I told the firm that I  
 15 was not going to run for reelection.  
 16 Q. You were also the M&A practice  
 17 group head. That's another position that  
 18 you held within DPW; correct?  
 19 A. For a brief period of time, yes.  
 20 Q. What was the period of time that  
 21 you held that position?  
 22 A. I believe it was from 2016  
 23 through 2017.  
 24 Q. And just stepping back for a  
 25 moment, the head of corporate department

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1 BICK - CONFIDENTIAL  
 2 position, that was from 2011 through --  
 3 did you say 2018; is that correct?  
 4 A. REDACTED  
 5 REDACTED  
 6 REDACTED  
 7 REDACTED  
 8 REDACTED  
 9 REDACTED  
 10 REDACTED  
 11 REDACTED  
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1 BICK - CONFIDENTIAL  
 2 REDACTED  
 3 REDACTED  
 4 REDACTED  
 5 REDACTED  
 6 REDACTED  
 7 REDACTED  
 8 REDACTED  
 9 Q. Was your departure from the  
 10 position of M&A practice group head  
 11 related in any way to any formal  
 12 investigation that occurred at Davis Polk?  
 13 A. No.  
 14 Q. Was your departure from the  
 15 position related in any way to any  
 16 informal investigation that occurred at  
 17 Davis Polk?  
 18 A. No.  
 19 Q. Did any individual or group of  
 20 individuals ask you to step down from that  
 21 position?  
 22 A. No.  
 23 Q. Did any individual or group of  
 24 individuals recommend that you step down  
 25 from that position?

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1 BICK - CONFIDENTIAL  
 2 A. No.  
 3 Q. Did any individual or group of  
 4 individuals require that you step down  
 5 from that position?  
 6 A. No.  
 7 Q. And so for the sake of  
 8 completion, why did you step down from the  
 9 role as the M&A practice group head?  
 10 MR. BIRENBOIM: Objection, asked  
 11 and answered. You can answer it again  
 12 if you have something to add.  
 13 THE WITNESS: I don't.  
 14 BY MR. JEFFRIES:  
 15 Q. So you're standing by your  
 16 testimony which was that it was an interim  
 17 position?  
 18 A. I took the position expecting to  
 19 step down after a brief period of time.  
 20 Q. While you were in the position or  
 21 going into the position, was there a  
 22 forecasted date by which you would be  
 23 stepping down?  
 24 A. No.  
 25 Q. You've also been a part of the

<p style="text-align: right;">Page 34</p> <p>1 BICK</p> <p>2 three-person management committee within</p> <p>3 Davis Polk; correct?</p> <p>4 A. Yes, we discussed that.</p> <p>5 Q. When did you first start serving</p> <p>6 as a member of the firm's three-person</p> <p>7 management committee?</p> <p>8 A. As I said previously, 2011.</p> <p>9 Q. How did it come to pass that</p> <p>10 you -- well, how did it come to pass that</p> <p>11 you were a member of the three-person</p> <p>12 management committee, was that previously</p> <p>13 a part of your position as the head of the</p> <p>14 corporate group?</p> <p>15 MR. BIRENBOIM: Objection to</p> <p>16 form. You may answer.</p> <p>17 THE WITNESS: Could you rephrase</p> <p>18 the question? I don't understand the</p> <p>19 question.</p> <p>20 BY MR. JEFFRIES:</p> <p>21 Q. Is there any similarity between</p> <p>22 the roles of head of the corporate group</p> <p>23 and the position of the three-person</p> <p>24 management committee, are those the same</p> <p>25 roles or separate?</p>	<p style="text-align: right;">Page 36</p> <p>1 BICK</p> <p>2 investigation? I'm not sure I would</p> <p>3 view it as an investigation. I don't</p> <p>4 understand.</p> <p>5 BY MR. JEFFRIES:</p> <p>6 Q. Let's step back a little bit</p> <p>7 then.</p> <p>8 Based on your experience and</p> <p>9 knowledge of firm policies and procedures,</p> <p>10 what type of investigation, if any, does</p> <p>11 Davis Polk undertake with respect to a</p> <p>12 claim of discrimination? How is such a</p> <p>13 claim handled?</p> <p>14 A. If we become aware of a</p> <p>15 complaint, we work with lawyers in the</p> <p>16 general counsel office, sometimes with</p> <p>17 outside counsel, and we review the matter.</p> <p>18 Q. Who is responsible for</p> <p>19 undertaking that review?</p> <p>20 A. If it's a complaint regarding</p> <p>21 discrimination or harassment, it would be</p> <p>22 the management committee working with the</p> <p>23 general counsel office and outside counsel</p> <p>24 sometimes.</p> <p>25 Q. And what role would the</p>
<p style="text-align: right;">Page 35</p> <p>1 BICK</p> <p>2 A. They are one and the same. I am</p> <p>3 on the management committee and my title</p> <p>4 on the management committee is global head</p> <p>5 of corporate. That was a specific spot at</p> <p>6 the time and that's what I was elected to.</p> <p>7 Q. Did Davis Polk investigate any</p> <p>8 complaints of discrimination, harassment</p> <p>9 or retaliation between the years of 2014</p> <p>10 and 2018?</p> <p>11 A. Apart from Kaloma Cardwell, I</p> <p>12 have no other recollection of any other</p> <p>13 such complaint.</p> <p>14 Q. Based on your position as --</p> <p>15 based on the positions that you've</p> <p>16 mentioned holding relative to firm</p> <p>17 management, are you aware of whether or</p> <p>18 not the firm initiated an investigation</p> <p>19 based on the complaints made by</p> <p>20 Mr. Kaloma Cardwell in relation to his</p> <p>21 employment between the years of 2014 and</p> <p>22 2018 at Davis Polk?</p> <p>23 MR. BIRENBOIM: Objection to</p> <p>24 form. You can answer the question.</p> <p>25 THE WITNESS: How do you define</p>	<p style="text-align: right;">Page 37</p> <p>1 BICK</p> <p>2 management committee itself play within</p> <p>3 that process?</p> <p>4 A. We're making decisions for the</p> <p>5 firm.</p> <p>6 Q. What steps in an investigation</p> <p>7 such as the type that we described, what</p> <p>8 would the steps be that the management</p> <p>9 committee weighs in on, what kind of</p> <p>10 decisions would be made, what would the</p> <p>11 steps be?</p> <p>12 A. It's a little vague. I couldn't</p> <p>13 site categorically each and every step we</p> <p>14 take. As I said, we consult with general</p> <p>15 counsel, we follow their lead in how they</p> <p>16 would ask questions or do an</p> <p>17 investigation, if necessary, and if they</p> <p>18 need input from us or any particular</p> <p>19 decisions, we do so.</p> <p>20 Q. So I think that we're both in</p> <p>21 agreement as to the fact that an</p> <p>22 investigation would require some type of</p> <p>23 affirmative steps to be taken; correct?</p> <p>24 It entails the undertaking of some</p> <p>25 affirmative steps; correct?</p>



<p style="text-align: right;">Page 78</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 THE WITNESS: Can you move it up</p> <p>3 or down so I can see above it, if</p> <p>4 that's what you're referring to?</p> <p>5 MR. JEFFRIES: I'm going to need</p> <p>6 you to move it down a little bit.</p> <p>7 VERITEXT CONCIERGE: I'm sorry,</p> <p>8 what am I doing? Mr. Bick has full</p> <p>9 control here.</p> <p>10 THE WITNESS: Okay, sorry. I'll</p> <p>11 move it down.</p> <p>12 BY MR. JEFFRIES:</p> <p>13 Q. And again orienting you to</p> <p>14 February 2, 2017 at 11:50 a.m.</p> <p>15 A. That her response that Harold and</p> <p>16 Brian are the staffing partners for third</p> <p>17 years and more senior, that reference,</p> <p>18 yes.</p> <p>19 Q. Right. So it states, "The</p> <p>20 staffing partners (currently Brian Wolfe</p> <p>21 and Harold Birnbaum) handle staffing for</p> <p>22 third years and more senior. The</p> <p>23 automatic e-mail comes from the system as</p> <p>24 me every Tuesday. Christine puts all</p> <p>25 updates together in one chart, which gets</p>	<p style="text-align: right;">Page 80</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 associate, Harold Birnbaum and Brian Wolfe</p> <p>3 were the two primarily responsible for</p> <p>4 staffing Cardwell. Do you agree with</p> <p>5 that?</p> <p>6 A. Yes, the M&amp;A group had two</p> <p>7 staffing partners, Brian and Harold, and</p> <p>8 so they would have been staffing generally</p> <p>9 third-year associates and above.</p> <p>10 Q. Who else, if anyone, was also</p> <p>11 primarily responsible for staffing</p> <p>12 third-years and those more senior?</p> <p>13 A. Just those two.</p> <p>14 Q. Going back to that time, what</p> <p>15 would your position have been within the</p> <p>16 M&amp;A group?</p> <p>17 A. At this point, I was still head</p> <p>18 of the M&amp;A group.</p> <p>19 <b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p>
<p style="text-align: right;">Page 79</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 sent to the staffing partners and me."</p> <p>3 You see that language; correct?</p> <p>4 A. Yes.</p> <p>5 Q. Mr. Birnbaum became a staffing</p> <p>6 partner in the firm's M&amp;A group in the</p> <p>7 summer of 2016; correct?</p> <p>8 A. I don't know the precise date.</p> <p>9 Q. Does that sound like the time</p> <p>10 frame during which he became a staffing</p> <p>11 partner?</p> <p>12 A. Well, I would agree he's the</p> <p>13 staffing partner at this time.</p> <p>14 Q. And do you know when Mr. Cardwell</p> <p>15 became a third-year associate?</p> <p>16 A. It would have been sometime in</p> <p>17 the fall of 2016, two years after he</p> <p>18 started at the firm.</p> <p>19 Q. Was he a member of the M&amp;A group</p> <p>20 at the time he became a third-year</p> <p>21 associate?</p> <p>22 A. Yes.</p> <p>23 Q. Carolina Fenner claimed in her</p> <p>24 e-mail to Mr. Cardwell that from the time</p> <p>25 that Mr. Cardwell had become a third-year</p>	<p style="text-align: right;">Page 81</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 <b>REDACTED</b></p> <p>3 Q. In your role as the head of the</p> <p>4 M&amp;A group, did you have input or were you</p> <p>5 entitled to have input in the staffing of</p> <p>6 associates on different assignments?</p> <p>7 A. Any partner can have input to the</p> <p>8 staffing partners. There's dialogues all</p> <p>9 the time. When new deals come in you talk</p> <p>10 to the staffing partners and you give them</p> <p>11 input as to your needs and who is</p> <p>12 available.</p> <p>13 MR. JEFFRIES: I'm now going to</p> <p>14 turn to tab 3. I'd like to have tab 3</p> <p>15 moved into evidence.</p> <p>16 MR. BIRENBOIM: Mr. Bick, are you</p> <p>17 okay, do you need a break?</p> <p>18 THE WITNESS: I'm still okay,</p> <p>19 Bruce.</p> <p>20 MR. BIRENBOIM: Anyone else need</p> <p>21 a break on our team?</p> <p>22 MR. JEFFRIES: Here's what we'll</p> <p>23 do. We'll take a break in a few</p> <p>24 minutes. I'm just going to make it</p> <p>25 through this next range of questions</p>

21 (Pages 78 - 81)



<p style="text-align: right;">Page 106</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 Mr. Cardwell's performance reviews?</p> <p>3 MR. BIRENBOIM: Objection to</p> <p>4 form.</p> <p>5 THE WITNESS: Harold's knowledge</p> <p>6 would be derivative in the sense that</p> <p>7 he would have been in the M&amp;A partner</p> <p>8 meetings where all associates are</p> <p>9 reviewed, and he in theory was at</p> <p>10 those meetings when Kaloma was</p> <p>11 reviewed and heard the performance</p> <p>12 review.</p> <p>13 BY MR. JEFFRIES:</p> <p>14 Q. What about with respect to</p> <p>15 Ms. Fenner, would the same rationale apply</p> <p>16 to Ms. Fenner with respect to her ability</p> <p>17 or her derivative knowledge of</p> <p>18 Mr. Cardwell's performance reviews?</p> <p>19 A. Generally representatives of</p> <p>20 associate development, Renee, Carolina,</p> <p>21 others would participate at review</p> <p>22 sessions for associates. I don't know</p> <p>23 whether Carolina was present on the day</p> <p>24 that Kaloma received his review and heard</p> <p>25 the review internally with the partners.</p>	<p style="text-align: right;">Page 108</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 A. Who worked with the firm's M&amp;A</p> <p>3 partners?</p> <p>4 Q. Yourself, as the head of the M&amp;A</p> <p>5 group, you would have been working with</p> <p>6 the M&amp;A partners in a variety of</p> <p>7 capacities; correct?</p> <p>8 A. I'm sorry, David, what was the</p> <p>9 time period you're talking about?</p> <p>10 Q. October 2016 through March 2017.</p> <p>11 A. Yes, I was head of the M&amp;A group</p> <p>12 and I would be working with partners in</p> <p>13 that capacity.</p> <p>14 MR. JEFFRIES: You can take this</p> <p>15 exhibit down, Zach.</p> <p>16 BY MR. JEFFRIES:</p> <p>17 Q. And in your capacity as the head</p> <p>18 of the M&amp;A group, you would have had as we</p> <p>19 discussed, input with respect to staffing</p> <p>20 during that period of time; correct?</p> <p>21 A. I was not responsible for</p> <p>22 day-to-day staffing so generally I</p> <p>23 wouldn't have been involved in these type</p> <p>24 of staffing decisions. So you say I could</p> <p>25 have input, yes, I could walk into</p>
<p style="text-align: right;">Page 107</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 Q. And based on the nature of the</p> <p>3 e-mails that we've read from</p> <p>4 Ms. Carolina Fenner with respect to the</p> <p>5 staffing of Mr. Cardwell, you would agree</p> <p>6 that Ms. Fenner was concerned as to the</p> <p>7 lack of staffing that Mr. Cardwell was</p> <p>8 receiving during the period of October</p> <p>9 2016 through March 2017; correct?</p> <p>10 MR. BIRENBOIM: Objection,</p> <p>11 foundation.</p> <p>12 THE WITNESS: I don't know if she</p> <p>13 was concerned or not. I think she's</p> <p>14 asked -- she knows that he has</p> <p>15 capacity and is asking that he get</p> <p>16 work but I don't know the state of her</p> <p>17 mind.</p> <p>18 BY MR. JEFFRIES:</p> <p>19 Q. Well, she clearly thinks that he</p> <p>20 should be staffed; correct?</p> <p>21 A. Yes, it would be great if we</p> <p>22 could give him something, yes.</p> <p>23 Q. During the period of October 2016</p> <p>24 through March 2017, you worked with the</p> <p>25 firm's M&amp;A partners; correct?</p>	<p style="text-align: right;">Page 109</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 Harold's office and ask, but my</p> <p>3 interaction with staffing partners was</p> <p>4 generally staffing on my matters.</p> <p>5 Q. But I think you would agree that</p> <p>6 as a matter of practice based off of your</p> <p>7 position as the head of the group, you had</p> <p>8 input in -- you had the ability to have</p> <p>9 input into the staffing assignments --</p> <p>10 A. You say as a matter of practice.</p> <p>11 If I wanted to go in and talk to partners</p> <p>12 about particular staffing, I could.</p> <p>13 Q. And during the period of October</p> <p>14 2016 through March 2017, you worked with</p> <p>15 the firm's M&amp;A partners to staff</p> <p>16 Mr. Cardwell differently than the firm's</p> <p>17 white M&amp;A associates, didn't you?</p> <p>18 A. I did not.</p> <p>19 Q. Did Mr. Cardwell's race in any</p> <p>20 way contribute to you and the firm's M&amp;A</p> <p>21 partners staffing Mr. Cardwell differently</p> <p>22 than the firm's white M&amp;A associates?</p> <p>23 A. No, sir, it did not.</p> <p>24 <b>REDACTED</b></p> <p>25 <b>REDACTED</b></p>

<p style="text-align: right;">Page 110</p> <p>1 BICK - CONFIDENTIAL/HIGHLY CONFIDENTIAL</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 BY MR. JEFFRIES:</p> <p>10 Q. And when you say until maybe</p> <p>11 March time frame, what, if anything, did</p> <p>12 you learn about the status of his billable</p> <p>13 hours during March?</p> <p>14 A. That he had not had significant</p> <p>15 billable hours consistent with the</p> <p>16 document we reviewed previously.</p> <p>17 Q. How did that come to your</p> <p>18 knowledge?</p> <p>19 A. Someone brought it to my</p> <p>20 attention. I can't remember precisely</p> <p>21 who.</p> <p>22 Q. Well, who would have been in a</p> <p>23 position to bring that particular detail</p> <p>24 to your attention at that time?</p> <p>25 A. Different people.</p>	<p style="text-align: right;">Page 112</p> <p>1 BICK - CONFIDENTIAL/HIGHLY CONFIDENTIAL</p> <p>2 the staffing but I do know that he had</p> <p>3 low billable hours.</p> <p>4 BY MR. JEFFRIES:</p> <p>5 Q. In keeping with what you're</p> <p>6 stating, you would agree that between</p> <p>7 October 2016 and March 2017, Mr. Cardwell</p> <p>8 had low billable hours, right?</p> <p>9 A. Yes, during I believe December</p> <p>10 and January, February, March, it would</p> <p>11 have been low billable hours, yes.</p> <p>12 Q. In fact, alarmingly low billable</p> <p>13 hours; correct?</p> <p>14 A. That's your characterization, not</p> <p>15 mine.</p> <p>16 Q. Well, 14.1 billable hours in</p> <p>17 December, you don't consider that low?</p> <p>18 A. I do consider it low.</p> <p>19 Q. Low on what spectrum, is it an</p> <p>20 average amount of -- is there nothing</p> <p>21 about him billing 14 hours in December</p> <p>22 that would be alarming to you as the head</p> <p>23 of the M&amp;A group?</p> <p>24 A. I guess I object to the fact that</p> <p>25 it would be alarming.</p>
<p style="text-align: right;">Page 111</p> <p>1 BICK - CONFIDENTIAL/HIGHLY CONFIDENTIAL</p> <p>2 Q. Would that have been something</p> <p>3 that was brought to your attention by the</p> <p>4 staffing coordinators?</p> <p>5 MR. BIRENBOIM: Objection, calls</p> <p>6 for speculation. You can answer.</p> <p>7 THE WITNESS: Any number of</p> <p>8 people could have brought it to my</p> <p>9 attention.</p> <p>10 BY MR. JEFFRIES:</p> <p>11 Q. So just to be clear, I'm speaking</p> <p>12 about the period -- a period of October</p> <p>13 2016 through March 2017 during which</p> <p>14 Mr. Cardwell was a member of the M&amp;A</p> <p>15 group; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And accordingly, or</p> <p>18 correspondingly rather, a period during</p> <p>19 which as a member of the M&amp;A group,</p> <p>20 Mr. Cardwell was not staffed on matters by</p> <p>21 the staffing coordinators of the M&amp;A</p> <p>22 group; correct?</p> <p>23 MR. BIRENBOIM: Objection to</p> <p>24 form.</p> <p>25 THE WITNESS: I don't know about</p>	<p style="text-align: right;">Page 113</p> <p>1 BICK - HIGHLY CONFIDENTIAL</p> <p>2 Q. How did you react to finding out</p> <p>3 he billed 14 hours in December?</p> <p>4 MR. BIRENBOIM: Objection, form,</p> <p>5 foundation.</p> <p>6 THE WITNESS: My reaction was we</p> <p>7 needed to try to get him work.</p> <p>8 BY MR. JEFFRIES:</p> <p>9 Q. How did you react to the fact</p> <p>10 that there were a series of months after</p> <p>11 December and up to the period of March</p> <p>12 2017 where Mr. Cardwell billed single</p> <p>13 digits in hours?</p> <p>14 A. Well, I think it gets into the</p> <p>15 issue of his performance and so I</p> <p>16 understood what had happened and how it --</p> <p>17 why it was happening, but I knew it had to</p> <p>18 be addressed and find him work.</p> <p>19 Q. With respect to your statement</p> <p>20 about understanding what happened and why</p> <p>21 it happened, what is it that you</p> <p>22 understood happened that led to his</p> <p>23 considerably low hours being billed</p> <p>24 between December and March?</p> <p>25 [REDACTED]</p>

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1 BICK  
2 REDACTED  
3 REDACTED  
4 REDACTED  
5 REDACTED  
6 REDACTED  
7 REDACTED  
8 Q. So it's your understanding and  
9 your testimony that since Mr. Cardwell  
10 began at the firm, he had been receiving a  
11 series of performance reviews indicating  
12 that he was a poor performer?  
13 A. That he had performance issues  
14 that he needed to work on.  
15 Q. What was your understanding of  
16 those performance issues that would have  
17 contributed to him -- that would have led  
18 to him not being staffed while he was an  
19 associate in your practice group?  
20 A. My recollection of the key points  
21 that were communicated to him in different  
22 performance reviews, including one that I  
23 discussed with him, would be first that I  
24 would think of as sort of time management  
25 and process issues which would be

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1 BICK  
2 responsiveness to calls and e-mails from  
3 members of the team and clients, to  
4 understanding sort of the work needed to  
5 be done, making sure he asked all the  
6 questions so that he could deliver a  
7 better subset of work product when he  
8 delivered it and not requiring additional  
9 work by either the associates or the  
10 partner in charge, just attention to  
11 details and carelessness where sometimes  
12 work would not be completed with the right  
13 conforming changes or other items  
14 addressed, and again, general lack of  
15 understanding from time to time on work.  
16 So this had been communicated to  
17 him and was discussed in the fall and the  
18 deal was that he was not keeping up with  
19 the people in his immediate class of 2014  
20 from a performance point of view and that  
21 made it a bit more challenging for us to  
22 staff him on the transactions that were  
23 coming up relative to other associates who  
24 had availability and time.  
25 Q. And were any of those assessments

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1 BICK - CONFIDENTIAL  
2 based on -- so your position is that those  
3 issues, those so-called issues are why he  
4 wasn't staffed from December through  
5 March?  
6 A. Yes, it was related to his  
7 performance over the last two years.  
8 Q. And how do you know that?  
9 A. Because I read his review files.  
10 Q. How do you know that that is what  
11 drove Mr. Wolfe's and Mr. Birnbaum's  
12 thinking with respect to them refraining  
13 from staffing him between October --  
14 between the period of October 2016 through  
15 March of 2017?  
16 MR. BIRENBOIM: Objection to  
17 form, mischaracterizes the record, the  
18 use of refrain. You can answer.  
19 REDACTED  
20 REDACTED  
21 REDACTED  
22 REDACTED  
23 REDACTED  
24 REDACTED  
25 REDACTED

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1 BICK - CONFIDENTIAL  
2 REDACTED  
3 REDACTED  
4 REDACTED  
5 REDACTED  
6 REDACTED  
7 REDACTED  
8 REDACTED  
9 REDACTED  
10 REDACTED  
11 REDACTED  
12 REDACTED  
13 MR. JEFFRIES: So at this time I  
14 would like to move in tab 7.  
15 (Exhibit 7, document Bates  
16 labeled DPW\_SDNY-000086138, marked for  
17 identification.)  
18 BY MR. JEFFRIES:  
19 Q. So at the very bottom of the  
20 page, do you see the e-mail --  
21 A. I'm just trying to get the  
22 control. I'm going to increase the size  
23 because I can't read it. Okay.  
24 Q. I'm going to be drawing your  
25 attention to the e-mail from you to

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1 BICK - CONFIDENTIAL

2 I have no recollection that Kaloma's

3 complaint was discussed at the firm

4 meeting during the week of February

5 5th.

6 BY MR. JEFFRIES:

7 Q. Well, what about conversations

8 about Mr. Cardwell generally? Did you

9 engage in any conversations about

10 Mr. Cardwell generally during the annual

11 meeting of 2018?

12 A. Outside the firm meeting, we had

13 some discussions regarding Kaloma in the

14 month of February. I don't recollect

15 whether it was during the week of the

16 annual meeting but it would have been just

17 a separate conversation, not associated

18 with the firm meeting.

19 Q. So with respect to those

20 conversations, who were they had with?

21 A. To my recollection, it would be

22 Tom Reid, the managing partner, Louis

23 Goldberg, Oliver Smith, both M&A partners,

24 and perhaps a few others I don't

25 recollect.

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1 BICK - CONFIDENTIAL

2 Q. Do you recall if you had

3 conversations with Harold Birnbaum about

4 Mr. Cardwell in February?

5 A. Harold might have been included

6 but I don't remember.

7 Q. Do you recall whether you had

8 conversations with Brian Wolfe about

9 Mr. Cardwell in February 2018?

10 A. He might have been included, too,

11 but I don't remember.

12 Q. Do you recall whether you had any

13 conversations with Daniel Brass about

14 Mr. Cardwell in February of 2018?

15 A. I do not think so.

16 Q. What about Len Kreynin?

17 A. He could have been included but I

18 don't remember.

19 Q. What is it about the period --

20 what is it about the period of February

21 2018 that sparks your recollection that

22 there were conversations about

23 Mr. Cardwell during that specific period

24 of time?

25 A. Well, in terms of the chronology

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1 BICK - CONFIDENTIAL

2 here, roughly two weeks prior to this

3 e-mail chain, I know that Louis Goldberg

4 and Oliver Smith sat down and talked to

5 Kaloma about his performance and was

6 effectively giving him his review for the

7 2017 time period.

8 REDACTED

9 REDACTED

10 REDACTED

11 REDACTED

12 REDACTED

13 REDACTED

14 REDACTED

15 REDACTED

16 REDACTED

17 And so from that review until a

18 date in February, we were considering what

19 we would do, whether to continue trying to

20 get him work and staff him on transactions

21 or effectively tell him to go look for

22 another job. The conclusion was that he

23 should look for another job, that he

24 wouldn't be staffed on matters going

25 forward, so looking for another job would

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1 BICK - CONFIDENTIAL

2 be his -- what he should be doing.

3 He would get fully paid while he

4 was at the firm and that message was

5 delivered I think the week after this

6 annual meeting based on conversations we

7 had, and I believe it was Oliver and Louis

8 who went back and gave him that message.

9 Q. And how do you recall that in the

10 sequence of events?

11 MR. BIRENBOIM: Objection to

12 form.

13 THE WITNESS: Based on the

14 documents I reviewed regarding his

15 review and my recollection.

16 MR. JEFFRIES: Just off the

17 record for one moment.

18 (Discussion off the record.)

19 MR. JEFFRIES: At this point, I'm

20 going to introduce tab 3 into

21 evidence.

22 VERITEXT CONCIERGE: Would you

23 like me to pull tab 3 back up? We

24 introduced tab 3 at 11:13 a.m.

25 MR. JEFFRIES: Give me one

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1 BICK - CONFIDENTIAL

2 you've given into this line of questioning

3 based off of your prior response.

4 MR. JEFFRIES: The witness

5 indicated that there were items, that

6 there were incidents that he learned

7 about within the -- within his --

8 within the process of him being aware

9 of the EEOC complaint and I'm asking

10 what other incident he learned

11 about --

12 MR. BIRENBOIM: Wait a minute,

13 Mr. Bick.

14 THE WITNESS: Sorry.

15 MR. BIRENBOIM: I know exactly

16 what you're asking him and you're not

17 entitled to inquire what he learned

18 about from counsel in connection with

19 his meetings with counsel. So I

20 direct the witness not to answer to

21 the extent that question calls for the

22 disclosure of those discussions.

23 BY MR. JEFFRIES:

24 Q. Without asking and without giving

25 information about any advice given to you

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1 BICK - CONFIDENTIAL

2 by counsel, Mr. Bick, aside from this

3 particular incident that's chronicled in

4 the e-mail, were there other incidents

5 that you learned about relative to

6 Mr. Cardwell at the time that you were

7 discussing the EEOC complaint that

8 Mr. Cardwell made?

9 A. I believe there were other

10 incidents but I learned about those where

11 counsel was present.

12 MR. BIRENBOIM: Mr. Bick, to be

13 clear, if you learned something by --

14 MR. JEFFRIES: Mr. Birenboim,

15 wait a minute. Mr. Birenboim.

16 MR. BIRENBOIM: I'm trying to

17 help.

18 MR. JEFFRIES: We're not going to

19 do that. This is neither an objection

20 nor anything appropriate for the

21 record.

22 MR. BIRENBOIM: I was trying to

23 help you get the information.

24 MR. JEFFRIES: I don't believe

25 that to be the case. I'll do it

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1 BICK - CONFIDENTIAL

2 myself, thank you very much.

3 BY MR. JEFFRIES:

4 Q. Mr. Bick, what is the -- what is

5 BAG?

6 A. It's the Black Affinity Group.

7 Q. And what are affinity groups?

8 A. Affinity groups are different

9 groups of lawyers that get organized for

10 various functions such as for Black

11 associates, for Asian associates, for

12 women, parents, mothers, so they can form

13 different groups to meet and discuss

14 common issues relevant to the group and

15 other interests or as well as social

16 functions.

17 Q. So the BAG group is a Black

18 Affinity Group within Davis Polk; correct?

19 A. Yes.

20 Q. Would BAG have existed during

21 2014 through 2018?

22 A. I believe so but I'm not a

23 hundred percent sure when it started but I

24 believe it existed.

25 **REDACTED**

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1 BICK - CONFIDENTIAL

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

9 Q. To be clear, did you ever hear

10 about Mr. Cardwell and other BAG members

11 meeting with the firm's diversity

12 committee and associate development

13 department at any time --

14 MR. BIRENBOIM: Objection, asked

15 and answered.

16 Q. -- during the time he was

17 employed at the firm?

18 MR. BIRENBOIM: Objection, asked

19 and answered. You may answer again.

20 THE WITNESS: I learned about it

21 after the complaint was filed.

22 BY MR. JEFFRIES:

23 Q. Did you learn about -- what did

24 you learn about the meeting?

25 MR. BIRENBOIM: Objection.



<p style="text-align: right;">Page 194</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 conversations. I don't know the precise</p> <p>3 meetings or the actual conversations, but</p> <p>4 management committee knew about the</p> <p>5 meeting with Kaloma and general counsel</p> <p>6 was involved at some juncture here.</p> <p>7 Q. And how did they know about that</p> <p>8 meeting with Kaloma?</p> <p>9 MR. BIRENBOIM: Objection to</p> <p>10 form.</p> <p>11 THE WITNESS: Tom had a follow-on</p> <p>12 meeting, everyone was informed and</p> <p>13 again, Kaloma took his month off and I</p> <p>14 was really focusing on coming up with</p> <p>15 a work plan for when he returned.</p> <p>16 BY MR. JEFFRIES:</p> <p>17 Q. When you say everyone involved,</p> <p>18 who are you talking about?</p> <p>19 A. People from the general counsel's</p> <p>20 office, the management committee, Jim, Tom</p> <p>21 and myself. Sharon was I think involved</p> <p>22 and knew what was going on.</p> <p>23 Q. Were there any M&amp;A partners that</p> <p>24 were involved in the discussions that lead</p> <p>25 up to this meeting?</p>	<p style="text-align: right;">Page 196</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 them.</p> <p>3 Q. Was it possible you communicated</p> <p>4 information to the staffing partners about</p> <p>5 the meeting with Tom?</p> <p>6 MR. BIRENBOIM: Objection, calls</p> <p>7 for speculation. You may answer.</p> <p>8 THE WITNESS: I just don't know.</p> <p>9 BY MR. JEFFRIES:</p> <p>10 <b>REDACTED</b></p> <p>16 Q. So is it your testimony that in</p> <p>17 2016, you had no information or no</p> <p>18 knowledge about a meeting between Sheila</p> <p>19 Adams, Kaloma Cardwell and Tom Reid?</p> <p>20 A. I have no recollection of</p> <p>21 discussing that dinner in prior periods.</p> <p>22 Q. Did you come to learn that during</p> <p>23 that dinner with Tom Reid and Sheila</p> <p>24 Adams, Mr. Cardwell discussed topics</p> <p>25 related to diversity and inclusion at</p>
<p style="text-align: right;">Page 195</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 A. Not with respect to the meeting</p> <p>3 with Tom but as I was focusing on a work</p> <p>4 plan, just to get him work down the road,</p> <p>5 I was going to be talking to some of the</p> <p>6 M&amp;A partners in connection with that</p> <p>7 effort.</p> <p>8 Q. And which M&amp;A partners did you</p> <p>9 intend to speak to?</p> <p>10 A. Certainly the two staffing</p> <p>11 partners. I told Brian and Harold, and</p> <p>12 during the course of the discussions I</p> <p>13 reached out to a few partners. I don't</p> <p>14 know that I have a complete list about</p> <p>15 their willingness to work with Kaloma on</p> <p>16 some of their matters.</p> <p>17 Q. Since Mr. Cardwell had expressed</p> <p>18 concerns about staffing, did you tell the</p> <p>19 staffing partners about the meeting with</p> <p>20 Tom?</p> <p>21 A. I have no actual recollection of</p> <p>22 specifically talking about that with them.</p> <p>23 My recollection again is talking about a</p> <p>24 work plan and how to get Kaloma work.</p> <p>25 That was the discussion I was having with</p>	<p style="text-align: right;">Page 197</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 Davis Polk?</p> <p>3 MR. BIRENBOIM: Objection to the</p> <p>4 extent it calls for the disclosure of</p> <p>5 conversations with counsel. Otherwise</p> <p>6 you can answer.</p> <p>7 THE WITNESS: I have no</p> <p>8 recollection of the substance of the</p> <p>9 discussions at that dinner.</p> <p>10 BY MR. JEFFRIES:</p> <p>11 Q. Did the discussions about that</p> <p>12 dinner come up in relation to</p> <p>13 conversations about the EEOC complaint</p> <p>14 that Mr. Cardwell filed against Davis</p> <p>15 Polk?</p> <p>16 MR. BIRENBOIM: Same caution, any</p> <p>17 discussions or information learned</p> <p>18 from counsel, I would direct the</p> <p>19 witness not to answer. If you learned</p> <p>20 it from reading Mr. Cardwell's</p> <p>21 complaints, you certainly can testify</p> <p>22 about that.</p> <p>23 THE WITNESS: I have no</p> <p>24 substantive recollection.</p> <p>25 MR. JEFFRIES: I ask that tab 10</p>

50 (Pages 194 - 197)

<p style="text-align: right;">Page 198</p> <p>1 BICK - HIGHLY CONFIDENTIAL</p> <p>2 be moved into evidence.</p> <p>3 (Exhibit 12, document Bates</p> <p>4 labeled DPW_SDNY-000099560, marked for</p> <p>5 identification.)</p> <p>6 BY MR. JEFFRIES:</p> <p>7 Q. Do you see the item that's been</p> <p>8 placed into evidence?</p> <p>9 A. Yes.</p> <p>10 Q. Can you make it any larger? Why</p> <p>11 don't we make it larger.</p> <p>12 Do you see that that's an e-mail</p> <p>13 from Rocio Clausen and Carolina Fenner to</p> <p>14 Mr. Cardwell on September 8, 2016?</p> <p>15 A. Yes, I'm just reading it.</p> <p>16 (Witness perusing document.)</p> <p>17 Yes, I've read it now.</p> <p>18 Q. Do you see where the e-mail</p> <p>19 states, "I hope you are well. Would you</p> <p>20 be able to assist the credit group (mainly</p> <p>21 JW Perry and Frank Manley) with some KYC,</p> <p>22 organization, materials, resolution,</p> <p>23 certificates, et cetera, for a REDACTED</p> <p>24 deal closing later this month?"</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 200</p> <p>1 BICK - HIGHLY CONFIDENTIAL</p> <p>2 manager in the associate development</p> <p>3 department; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And what would your role have</p> <p>6 been at that point in time, in September</p> <p>7 of 2016?</p> <p>8 A. I was on the management committee</p> <p>9 and at that point I was head of the M&amp;A</p> <p>10 group.</p> <p>11 Q. At that point in time,</p> <p>12 Mr. Cardwell would have been an associate</p> <p>13 in the management -- in the M&amp;A</p> <p>14 department; correct?</p> <p>15 A. Yes.</p> <p>16 Q. And did you ever learn of an</p> <p>17 attempt to staff Mr. Cardwell while he was</p> <p>18 one of your associates in the M&amp;A</p> <p>19 department in a -- with respect to an</p> <p>20 assignment in the credit department?</p> <p>21 A. Look, this happens with some</p> <p>22 frequency where one group needs help and</p> <p>23 they don't have sufficient resources, so</p> <p>24 certainly within corporate that group will</p> <p>25 reach out and ask for help from other</p>
<p style="text-align: right;">Page 199</p> <p>1 BICK - HIGHLY CONFIDENTIAL</p> <p>2 A. I do.</p> <p>3 Q. On or around September or October</p> <p>4 in 2016, were you aware that Rocio Clausen</p> <p>5 and Carolina Fenner had reached out to</p> <p>6 Mr. Cardwell and attempted to staff him on</p> <p>7 a credit assignment?</p> <p>8 A. I was not aware of this staffing</p> <p>9 request.</p> <p>10 REDACTED</p> <p>11 REDACTED</p> <p>12 REDACTED</p> <p>13 REDACTED</p> <p>14 REDACTED</p> <p>15 REDACTED</p> <p>16 REDACTED</p> <p>17 Q. You never observed any</p> <p>18 discussions or you were never informed of</p> <p>19 any discussions related to Ms. Clausen's</p> <p>20 attempt to staff Mr. Cardwell on a credit</p> <p>21 assignment in 2016?</p> <p>22 A. No, something like this would not</p> <p>23 have been brought to my attention.</p> <p>24 Q. At this point in time in</p> <p>25 September of 2016, Ms. Clausen was a</p>	<p style="text-align: right;">Page 201</p> <p>1 BICK - HIGHLY CONFIDENTIAL</p> <p>2 practice groups and we do this all the</p> <p>3 time. So I read this, this is a fairly</p> <p>4 standard request and the reason Kaloma is</p> <p>5 being asked is because he did a rotation</p> <p>6 in credit so he has some training and</p> <p>7 experience that would be useful to the</p> <p>8 team working on this REDACTED transaction.</p> <p>9 So from my vantage point reading this for</p> <p>10 the first time, I think this is fairly</p> <p>11 standard and not unusual.</p> <p>12 Q. At any time were you aware that</p> <p>13 Mr. Cardwell and Rocio Clausen had a</p> <p>14 meeting about the staffing assignment?</p> <p>15 A. I have no recollection of that</p> <p>16 meeting, no.</p> <p>17 Q. Do you have any reason to believe</p> <p>18 that Mr. Cardwell questioned whether the</p> <p>19 assignment or his hours were connected to</p> <p>20 his race?</p> <p>21 A. I did not hear any such</p> <p>22 discussion or allegation.</p> <p>23 MR. JEFFRIES: At this point in</p> <p>24 time I'm going to ask that tab 11 be</p> <p>25 moved into evidence.</p>



<p style="text-align: right;">Page 202</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 VERITEXT CONCIERGE: I believe</p> <p>3 tab 11 was moved into evidence at</p> <p>4 1:22 p.m. Would you like me to pull</p> <p>5 it up?</p> <p>6 MR. JEFFRIES: Yes.</p> <p>7 BY MR. JEFFRIES:</p> <p>8 Q. With respect to this exhibit --</p> <p>9 we've already discussed the fact that in</p> <p>10 this particular exhibit, the person</p> <p>11 related to as John is yourself; correct?</p> <p>12 A. I believe so, yes.</p> <p>13 Q. And you see where it says that</p> <p>14 Kaloma needs to be someone's project as</p> <p>15 soon as possible?</p> <p>16 A. Yes.</p> <p>17 Q. I.e., get work and hours and</p> <p>18 direct feedback?</p> <p>19 A. Yes.</p> <p>20 Q. During Mr. Cardwell's employment,</p> <p>21 have you ever heard people describe</p> <p>22 Mr. Cardwell as needing to be someone's</p> <p>23 project?</p> <p>24 A. No.</p> <p>25 Q. To your knowledge, was</p>	<p style="text-align: right;">Page 204</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 REDACTED</p> <p>3 REDACTED</p> <p>4 REDACTED</p> <p>5 REDACTED</p> <p>6 REDACTED</p> <p>7 REDACTED</p> <p>8 REDACTED</p> <p>9 REDACTED</p> <p>10 REDACTED</p> <p>11 Q. You mentioned that that belief</p> <p>12 was in part formed by conversations with</p> <p>13 others. Which others, which people are</p> <p>14 you speaking about that contribute to that</p> <p>15 assessment?</p> <p>16 A. I spoke to Sophia as we discussed</p> <p>17 earlier and I reviewed review files from a</p> <p>18 whole bunch of lawyers regarding his</p> <p>19 performance over the years.</p> <p>20 Q. Anyone else?</p> <p>21 A. In September, not to my</p> <p>22 recollection, no.</p> <p>23 Q. So the review files you mentioned</p> <p>24 from other associates, do you know which</p> <p>25 associates those review files were from?</p>
<p style="text-align: right;">Page 203</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 Mr. Cardwell made someone's project?</p> <p>3 MR. BIRENBOIM: Objection to</p> <p>4 form.</p> <p>5 THE WITNESS: Not to my</p> <p>6 recollection, no.</p> <p>7 BY MR. JEFFRIES:</p> <p>8 Q. Within the context of this</p> <p>9 e-mail, what does it mean or what is being</p> <p>10 communicated with respect to Kaloma</p> <p>11 Cardwell being made someone's project?</p> <p>12 MR. BIRENBOIM: Objection to</p> <p>13 form, no foundation. It's not the</p> <p>14 witness's e-mail.</p> <p>15 THE WITNESS: I would be</p> <p>16 speculating. You would have to ask</p> <p>17 Sharon.</p> <p>18 BY MR. JEFFRIES:</p> <p>19 REDACTED</p> <p>20 REDACTED</p> <p>21 REDACTED</p> <p>22 REDACTED</p> <p>23 REDACTED</p> <p>24 REDACTED</p> <p>25 REDACTED</p>	<p style="text-align: right;">Page 205</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 MR. BIRENBOIM: Objection to</p> <p>3 form, mischaracterizes the testimony.</p> <p>4 THE WITNESS: Again I reviewed</p> <p>5 lawyer feedback that was in his review</p> <p>6 file, so that covered all lawyers, it</p> <p>7 could be associates, it could be</p> <p>8 counsel, it could be partners.</p> <p>9 BY MR. JEFFRIES:</p> <p>10 Q. And you believe that those</p> <p>11 individuals describe Mr. Cardwell as a</p> <p>12 poor performer at that time?</p> <p>13 A. They identified performance</p> <p>14 issues that needed to be addressed by</p> <p>15 Kaloma going forward.</p> <p>16 Q. Well, my question is whether or</p> <p>17 not they described him as a poor</p> <p>18 performer.</p> <p>19 A. I don't recollect the use of the</p> <p>20 precise phrase that you're using, poor</p> <p>21 performer. But again, the issues that we</p> <p>22 discussed of having issues with the</p> <p>23 substantive work, maybe not understanding</p> <p>24 the work assignment which led to working a</p> <p>25 little bit longer than was contemplated on</p>

<p style="text-align: right;">Page 222</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 when you became aware that Mr. Cardwell</p> <p>3 asked the firm if he could view his</p> <p>4 personnel file and performance reviews?</p> <p>5 A. I do remember that he asked to</p> <p>6 review the personnel files.</p> <p>7 Q. And how did you become aware of</p> <p>8 Mr. Cardwell's request?</p> <p>9 A. I believe the request was made to</p> <p>10 Sharon Crane and I learned about it</p> <p>11 through her or derivatively through her.</p> <p>12 Q. And did the firm indeed allow</p> <p>13 Mr. Cardwell to see any of the documents</p> <p>14 that were a part of his personnel file or</p> <p>15 performance reviews?</p> <p>16 A. I don't remember.</p> <p>17 Q. Aside from being informed, aside</p> <p>18 from the possibility or aside from being</p> <p>19 informed by Ms. Crane about the request</p> <p>20 being made by Mr. Cardwell, were you</p> <p>21 updated on what, if any, action was taken</p> <p>22 in regards to Mr. Cardwell's request?</p> <p>23 A. I have no recollection of the</p> <p>24 request or the outcome other than he made</p> <p>25 that request.</p>	<p style="text-align: right;">Page 224</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 you've expressed based on?</p> <p>3 MR. BIRENBOIM: Objection.</p> <p>4 THE WITNESS: Look, it was a</p> <p>5 policy that predated my time so I</p> <p>6 wasn't part of the original</p> <p>7 discussion.</p> <p>8 BY MR. JEFFRIES:</p> <p>9 Q. Do you have any indication as to</p> <p>10 whether or not that policy had changed in</p> <p>11 any way from the time that it was put into</p> <p>12 existence? You indicated that it predated</p> <p>13 you. Do you have any indication as to</p> <p>14 whether or not there were any changes</p> <p>15 within that policy that would have</p> <p>16 extended to the time that you were -- or</p> <p>17 that would have extended to the time</p> <p>18 encompassing Mr. Cardwell's request to see</p> <p>19 his file?</p> <p>20 A. I'm not familiar with or don't</p> <p>21 recollect any changes. There may have</p> <p>22 been changes that are required by law but</p> <p>23 I'm not familiar with that either.</p> <p>24 Q. So what was your understanding</p> <p>25 with respect to why Mr. Cardwell was</p>
<p style="text-align: right;">Page 223</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 Q. Do you know if it was against</p> <p>3 firm policy to allow Mr. Cardwell to see</p> <p>4 any documents that were a part of his</p> <p>5 personnel file or performance reviews?</p> <p>6 A. I do know that our policy for</p> <p>7 lawyers was not to give them their</p> <p>8 personnel file if they requested it.</p> <p>9 Q. You said that the policy was not</p> <p>10 to give the associate their performance</p> <p>11 file or their personnel file or</p> <p>12 performance reviews; is that correct?</p> <p>13 A. That was our policy not to give</p> <p>14 those files out to lawyers.</p> <p>15 Q. What about viewing those items,</p> <p>16 what's your understanding of the firm's</p> <p>17 policy that was in place during the time</p> <p>18 of Mr. Cardwell's employment with respect</p> <p>19 to allowing an associate to view their</p> <p>20 personnel file or performance reviews?</p> <p>21 A. What I answered previously that</p> <p>22 our policy we would not give or allow them</p> <p>23 to review their personnel policy --</p> <p>24 personnel file.</p> <p>25 Q. And what is that position that</p>	<p style="text-align: right;">Page 225</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 denied the ability to see his performance</p> <p>3 reviews and personnel files?</p> <p>4 MR. BIRENBOIM: Asked and</p> <p>5 answered. You can answer.</p> <p>6 THE WITNESS: I was going to say</p> <p>7 as I've previously answered, our</p> <p>8 policy was not to allow lawyers to see</p> <p>9 or have their personnel files, so that</p> <p>10 was the reason why he didn't get his.</p> <p>11 BY MR. JEFFRIES:</p> <p>12 Q. Was Mr. Cardwell's request the</p> <p>13 first time that an associate requested to</p> <p>14 see his or her performance reviews, to</p> <p>15 your knowledge?</p> <p>16 A. I don't know prior requests.</p> <p>17 MR. JEFFRIES: Zach, can we take</p> <p>18 down Exhibit 10?</p> <p>19 BY MR. JEFFRIES:</p> <p>20 REDACTED</p> <p>REDACTED</p> <p>REDACTED</p> <p>REDACTED</p> <p>REDACTED</p> <p>REDACTED</p>

<p style="text-align: right;">Page 226</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 REDACTED</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 Q. And is it your recollection that</p> <p>9 Mr. Cardwell asked for the leave of</p> <p>10 absence?</p> <p>11 A. That is my understanding, yes.</p> <p>12 Q. And why do you have that belief?</p> <p>13 MR. BIRENBOIM: Objection to</p> <p>14 form.</p> <p>15 THE WITNESS: In connection with</p> <p>16 preparation. I read e-mails at the</p> <p>17 time.</p> <p>18 BY MR. JEFFRIES:</p> <p>19 Q. With respect to the e-mails that</p> <p>20 you read in connection with that</p> <p>21 development, who were those e-mails from?</p> <p>22 A. I don't remember the person. It</p> <p>23 was someone in HR because he had been sort</p> <p>24 of nonresponsive to Phillip Mills in</p> <p>25 connection with an M&amp;A transaction that he</p>	<p style="text-align: right;">Page 228</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 to -- how did the M&amp;A group respond to</p> <p>3 Mr. Cardwell's request for a leave of</p> <p>4 absence?</p> <p>5 A. I don't think there was any M&amp;A</p> <p>6 group response.</p> <p>7 Q. Is it normal for an associate to</p> <p>8 request a leave of absence?</p> <p>9 MR. BIRENBOIM: Objection to</p> <p>10 form.</p> <p>11 THE WITNESS: Yes, I think</p> <p>12 associates and lawyers generally</p> <p>13 request a leave of absence from time</p> <p>14 to time based on personal</p> <p>15 circumstances.</p> <p>16 BY MR. JEFFRIES:</p> <p>17 Q. What's the firm's position on</p> <p>18 mandating nonvoluntary leave for</p> <p>19 employees?</p> <p>20 MR. BIRENBOIM: Objection to</p> <p>21 form.</p> <p>22 THE WITNESS: Mandating</p> <p>23 non-mandatory leaves? Implying what?</p> <p>24 BY MR. JEFFRIES:</p> <p>25 Q. You indicated Mr. Cardwell</p>
<p style="text-align: right;">Page 227</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 was working with and given the lack of</p> <p>3 response which extended over 24 hours, we</p> <p>4 became concerned about where he was and</p> <p>5 what was happening. So multiple people</p> <p>6 reached out to him, including HR, and my</p> <p>7 recollection is he responded to HR and</p> <p>8 flowing out of that was that he had to</p> <p>9 take some time off.</p> <p>10 Q. Is it your understanding that the</p> <p>11 person that reached Mr. Cardwell was the</p> <p>12 one that received the request from</p> <p>13 Mr. Cardwell to take a leave?</p> <p>14 A. I don't know specifically but I</p> <p>15 do believe that the person at HR who was</p> <p>16 reaching out, he responded to her, but I</p> <p>17 don't know the whole series of</p> <p>18 conversations between her and Kaloma</p> <p>19 Cardwell.</p> <p>20 Q. Do you remember anything else</p> <p>21 about this event?</p> <p>22 A. No, I think I've described what I</p> <p>23 remember but if you have any specific</p> <p>24 questions, I'm happy to answer.</p> <p>25 Q. How did the M&amp;A group respond</p>	<p style="text-align: right;">Page 229</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 requested the leave of absence; correct?</p> <p>3 A. I thought he did. That's my</p> <p>4 recollection.</p> <p>5 Q. Well --</p> <p>6 A. Because he responded that he</p> <p>7 wasn't able to respond to Phillip because</p> <p>8 of these stress issues.</p> <p>9 Q. What would your response be if I</p> <p>10 told you that Mr. Cardwell was -- if I</p> <p>11 told you that the leave of absence was</p> <p>12 something that was put to Mr. Cardwell by</p> <p>13 firm management as opposed to a leave of</p> <p>14 absence that he himself had requested?</p> <p>15 MR. BIRENBOIM: Objection to</p> <p>16 form.</p> <p>17 THE WITNESS: I was on the</p> <p>18 management committee. I have no</p> <p>19 recollection of that. Maybe someone</p> <p>20 discussed it with him but not to my</p> <p>21 knowledge.</p> <p>22 BY MR. JEFFRIES:</p> <p>23 Q. With respect to the meeting --</p> <p>24 actually withdrawn.</p> <p>25 Have you yourself seen any</p>

<p style="text-align: right;">Page 230</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 documents indicating Mr. Cardwell's</p> <p>3 request for a leave of absence?</p> <p>4 A. I remember seeing one e-mail</p> <p>5 where he was reporting in and saying that</p> <p>6 he was unable to respond because something</p> <p>7 to the effect that he was having a</p> <p>8 difficult time.</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 Q. And to the best of your</p> <p>15 understanding, why did Mr. Cardwell file a</p> <p>16 complaint with EEOC?</p> <p>17 MR. BIRENBOIM: Objection to</p> <p>18 form, no foundation. This witness</p> <p>19 doesn't know what Mr. Cardwell is</p> <p>20 thinking but you can answer.</p> <p>21 MR. JEFFRIES: The witness</p> <p>22 testified as having reviewed the</p> <p>23 complaints. I'm asking him to answer</p> <p>24 based off that.</p> <p>25 THE WITNESS: He was alleging</p>	<p style="text-align: right;">Page 232</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 now the whole question?</p> <p>3 BY MR. JEFFRIES:</p> <p>4 Q. Sure.</p> <p>5 Did you have any conversations</p> <p>6 about Mr. Cardwell's administrative</p> <p>7 complaints when he was working at the</p> <p>8 firm?</p> <p>9 A. Only in the context of talking to</p> <p>10 management committee with counsel present.</p> <p>11 Q. So it's your testimony that each</p> <p>12 of the conversations that you had about</p> <p>13 Mr. Cardwell's administrative complaints</p> <p>14 were in the presence of counsel and with</p> <p>15 the rest of the management committee; is</p> <p>16 that your testimony?</p> <p>17 A. Yes, that was the general</p> <p>18 practice.</p> <p>19 Q. And does that include e-mail</p> <p>20 communications?</p> <p>21 A. I believe so, yes.</p> <p>22 Q. Did you have any conversations</p> <p>23 about -- did you have any general</p> <p>24 conversations with any other members of</p> <p>25 the firm partnership with respect to</p>
<p style="text-align: right;">Page 231</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 racial discrimination and his</p> <p>3 treatment while at the firm.</p> <p>4 BY MR. JEFFRIES:</p> <p>5 Q. And what else do you remember</p> <p>6 about Mr. Cardwell's complaints, if</p> <p>7 anything else?</p> <p>8 A. No, no more details than that.</p> <p>9 Q. Did you have any conversations</p> <p>10 about Mr. Cardwell's administrative</p> <p>11 complaints when Mr. Cardwell was working</p> <p>12 at the firm?</p> <p>13 A. Can you rephrase that? I didn't</p> <p>14 hear the whole question.</p> <p>15 Q. Did you have any conversations</p> <p>16 about Mr. Cardwell's administrative</p> <p>17 complaints when he was working at the</p> <p>18 firm?</p> <p>19 A. When you refer to administrative</p> <p>20 complaints, what is that?</p> <p>21 Q. Complaints to EEOC and NYS DHR.</p> <p>22 MR. BIRENBOIM: You can answer</p> <p>23 that yes or no with respect to</p> <p>24 counsel.</p> <p>25 THE WITNESS: Can you just repeat</p>	<p style="text-align: right;">Page 233</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 Mr. Cardwell's complaints, the EEOC</p> <p>3 complaint and the NYS DHR complaint?</p> <p>4 A. Not to my knowledge, no.</p> <p>5 Q. A moment ago you mentioned</p> <p>6 that -- you mentioned the term general</p> <p>7 practice in connection with your</p> <p>8 conversations with the management</p> <p>9 committee and with respect to the general</p> <p>10 practice in relation to Mr. Cardwell's</p> <p>11 administrative complaint. Aside from</p> <p>12 those types of conversations, did you have</p> <p>13 any conversations with anyone else inside</p> <p>14 of the firm with respect to Mr. Cardwell's</p> <p>15 complaints?</p> <p>16 A. No, I think I answered this</p> <p>17 question before but the answer is no, to</p> <p>18 my knowledge.</p> <p>19 Q. And were you obligated to act on</p> <p>20 those complaints in any way in your role</p> <p>21 as a partner?</p> <p>22 MR. BIRENBOIM: Objection to</p> <p>23 form. If you understand that, you can</p> <p>24 answer it.</p> <p>25 THE WITNESS: How do you define</p>

<p style="text-align: right;">Page 242</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 in his first rotation, if he got five</p> <p>3 reviews, who would make the decision as to</p> <p>4 characterize which reviews would be</p> <p>5 weighed more than others in the summary</p> <p>6 review process?</p> <p>7 A. Again, the process that you're</p> <p>8 describing is not how I see a review</p> <p>9 process. Just again at a high level in an</p> <p>10 annual review, there will be a reviewing</p> <p>11 partner assigned to give the associate the</p> <p>12 review. That reviewing partner will look</p> <p>13 at the written reviews submitted by</p> <p>14 lawyers who have worked for in this case</p> <p>15 Kaloma.</p> <p>16 And that review then is discussed</p> <p>17 at a practice group meeting, in this case</p> <p>18 let's say M&amp;A, and other M&amp;A partners are</p> <p>19 encouraged to participate and attend that</p> <p>20 meeting. Not everyone does, they have</p> <p>21 work clients or client conflicts but most</p> <p>22 do attend those meetings. So the</p> <p>23 particular associate with the reviewing</p> <p>24 partner leading the discussion is</p> <p>25 discussed.</p>	<p style="text-align: right;">Page 244</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 MR. JEFFRIES: Yes, you can go</p> <p>3 down a bit.</p> <p>4 BY MR. JEFFRIES:</p> <p>5 Q. And do you see where it says in</p> <p>6 the second to last sentence in that</p> <p>7 paragraph, do you see the sentence that</p> <p>8 begins with "And despite meaningful"?</p> <p>9 A. I'm sorry, David, I'm just</p> <p>10 reviewing these paragraphs here.</p> <p>11 (Witness perusing document.)</p> <p>12 Q. Again that's going to be the</p> <p>13 middle paragraph, second to last sentence</p> <p>14 I'm drawing your attention to.</p> <p>15 A. Okay, sorry David, where do you</p> <p>16 want me to look?</p> <p>17 Q. So middle paragraph.</p> <p>18 A. The one that says Cardwell's</p> <p>19 performance, that paragraph?</p> <p>20 Q. That paragraph, second to last</p> <p>21 sentence.</p> <p>22 A. "And despite meaningful realtime</p> <p>23 feedback"?</p> <p>24 Q. Yes, and that line reads,</p> <p>25 "Despite meaningful realtime feedback over</p>
<p style="text-align: right;">Page 243</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 Others can raise questions of</p> <p>3 input. People who have given written</p> <p>4 reviews can add in or answer questions or</p> <p>5 give more background. And from that, the</p> <p>6 group discusses what the message should be</p> <p>7 to the lawyer in question, and the</p> <p>8 reviewing partner is responsible for</p> <p>9 taking that consensus review from the</p> <p>10 group, summarizing it and giving it to the</p> <p>11 lawyer in question in their annual review.</p> <p>12 Q. We'll come back to that. Do you</p> <p>13 see this document is dated December 5,</p> <p>14 2017?</p> <p>15 A. Actually where is that?</p> <p>16 Q. Would you just turn to the second</p> <p>17 page?</p> <p>18 A. Yes, I see a date, December 5,</p> <p>19 2017.</p> <p>20 Q. Now, if you turn to the next</p> <p>21 page, page 3, you're looking at the bottom</p> <p>22 of the page, do you see the paragraph that</p> <p>23 starts with Cardwell's performance?</p> <p>24 MR. BIRENBOIM: Can we go down a</p> <p>25 bit?</p>	<p style="text-align: right;">Page 245</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 the course of years, together with</p> <p>3 repeated interventions and second chances,</p> <p>4 Cardwell's performance has failed to</p> <p>5 improve."</p> <p>6 Do you see that?</p> <p>7 A. I do, yes.</p> <p>8 Q. So the firm told the NYS DHR that</p> <p>9 Cardwell received meaningful realtime</p> <p>10 feedback over the course of years; is that</p> <p>11 true?</p> <p>12 A. I believe he did, yes.</p> <p>13 Q. So what meaningful realtime</p> <p>14 feedback over the course of years did</p> <p>15 Mr. Cardwell receive in 2015?</p> <p>16 MR. BIRENBOIM: Objection.</p> <p>17 THE WITNESS: It varied. He just</p> <p>18 received to my knowledge his annual</p> <p>19 review from an M&amp;A partner, but others</p> <p>20 had indicated that they had talked to</p> <p>21 him about his performance on various</p> <p>22 transactions.</p> <p>23 BY MR. JEFFRIES:</p> <p>24 Q. So in regards to 2015, it's your</p> <p>25 testimony that the meaningful realtime</p>



<p style="text-align: right;">Page 246</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 feedback that you're talking about</p> <p>3 consisted of the summary review; is that</p> <p>4 correct?</p> <p>5 A. No, I said there was the summary</p> <p>6 review by the M&amp;A partner who gave him his</p> <p>7 annual review in 2015 but to my</p> <p>8 recollection, some of the reviews said</p> <p>9 that they had discussed these issues with</p> <p>10 Kaloma.</p> <p>11 Q. Do you recall any of those</p> <p>12 reviewers that said that they discussed --</p> <p>13 that they had taken up further discussion</p> <p>14 with Mr. Cardwell with respect to any</p> <p>15 performance issues or anything like that?</p> <p>16 A. I don't remember name by name but</p> <p>17 again, I reviewed all his reviews and that</p> <p>18 is my recollection, that some of them did</p> <p>19 discuss issues such as meeting deadlines</p> <p>20 and responsiveness, attending to details.</p> <p>21 These things came up from both associates</p> <p>22 and partners.</p> <p>23 Q. So in regards to 2015 reviews</p> <p>24 that you may have been relying on for that</p> <p>25 particular answer, did any of them</p>	<p style="text-align: right;">Page 248</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 seeing this from time to time.</p> <p>3 Q. And is it your testimony that</p> <p>4 these things were flagged in reviews that</p> <p>5 you would have -- is it your testimony</p> <p>6 these things were flagged with respect to</p> <p>7 reviews in 2016?</p> <p>8 A. Yes, based on -- certainly in</p> <p>9 2016. I know Sophia sat him down and</p> <p>10 discussed all of these things in detail so</p> <p>11 that's very important realtime feedback.</p> <p>12 And then I sat down and spoke to him in</p> <p>13 June of 2016 and talked about the need to</p> <p>14 focus on things that I thought were</p> <p>15 correctable, if he worked at it, which is</p> <p>16 responsiveness, that's within his control,</p> <p>17 paying attention to details and care,</p> <p>18 that's just rereading documents and making</p> <p>19 sure that he made all the changes that</p> <p>20 were necessary, and then making sure you</p> <p>21 understood the assignment going in so that</p> <p>22 if you have any questions, go back and ask</p> <p>23 because if you wait too long, it leads to</p> <p>24 him taking too much time and not meeting</p> <p>25 deadlines. So again you can sort of</p>
<p style="text-align: right;">Page 247</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 describe Mr. Cardwell as a poor performer?</p> <p>3 A. To my knowledge, no one used that</p> <p>4 phrase, poor performer, in the context of</p> <p>5 the review.</p> <p>6 Q. And what about with respect to</p> <p>7 2016?</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]. Again the same</p> <p>12 words you see in this paragraph,</p> <p>13 responsiveness to the team, to the</p> <p>14 clients, care and attention to details,</p> <p>15 asking questions at the beginning so he</p> <p>16 fully understood what the assignment was,</p> <p>17 because it would appear that he didn't</p> <p>18 fully understand the assignment and that</p> <p>19 led to one missing deadlines, and that the</p> <p>20 work product wasn't always very good so it</p> <p>21 would take time and effort for the</p> <p>22 supervising senior lawyers to redo the</p> <p>23 work, these things were flagged, not</p> <p>24 always fall together but lawyers were</p>	<p style="text-align: right;">Page 249</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 manage that process and if you can work on</p> <p>3 understanding the assignment and asking</p> <p>4 questions, then hopefully that will</p> <p>5 ameliorate the poor work product that was</p> <p>6 turned in as the deadlines approached.</p> <p>7 MR. JEFFRIES: I'm going to</p> <p>8 introduce at this point tab 19.</p> <p>9 (Exhibit 15, document entitled</p> <p>10 M&amp;A - Junior Associate Annual Review -</p> <p>11 Highlights, marked for</p> <p>12 identification.)</p> <p>13 BY MR. JEFFRIES:</p> <p>14 Q. Have you seen this document</p> <p>15 before, Mr. Bick?</p> <p>16 A. Yes, this is the 2015 review that</p> <p>17 Bill Chudd as reviewing partner did.</p> <p>18 Q. Do you see the header that</p> <p>19 says -- well, was this document created by</p> <p>20 the associate development department?</p> <p>21 MR. BIRENBOIM: Objection to</p> <p>22 form, foundation. If you know, you</p> <p>23 can answer.</p> <p>24 BY MR. JEFFRIES:</p> <p>25 Q. This document right here.</p>

<p style="text-align: right;">Page 254</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 correct?</p> <p>3 MR. BIRENBOIM: Objection to</p> <p>4 form, completely mischaracterizes the</p> <p>5 document. You may answer.</p> <p>6 THE WITNESS: No, I think it</p> <p>7 highlights key issues and if I'm</p> <p>8 reading this, this is not typical of a</p> <p>9 well-performing associate. So this is</p> <p>10 a constructive feedback where he needs</p> <p>11 to be responsive, he has to improve</p> <p>12 communication, he has to meet</p> <p>13 deadlines, he needs to spend more time</p> <p>14 with work product so he can get that</p> <p>15 work into them in a timely fashion and</p> <p>16 understand what he is doing. So this</p> <p>17 is not a great review to get.</p> <p>18 BY MR. JEFFRIES:</p> <p>19 Q. In keeping with the things that</p> <p>20 you've indicated, nowhere on this document</p> <p>21 does it indicate that Mr. Cardwell is</p> <p>22 behind his class; right?</p> <p>23 A. No, but I have -- I read the</p> <p>24 underlying reviews myself so I know there</p> <p>25 was a concern in that regard.</p>	<p style="text-align: right;">Page 256</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 As an employee of Davis Polk,</p> <p>3 what position did Mr. Cardwell hold during</p> <p>4 the time of his employment?</p> <p>5 A. He was an associate in the</p> <p>6 corporate group.</p> <p>7 Q. Was Mr. Cardwell qualified for</p> <p>8 that position?</p> <p>9 MR. BIRENBOIM: Objection to</p> <p>10 form.</p> <p>11 THE WITNESS: How do you mean</p> <p>12 qualified? I mean he graduated from</p> <p>13 law school, he got his JD, he was</p> <p>14 admitted to the bar, so those are the</p> <p>15 base qualifications. He received an</p> <p>16 offer from Davis Polk to join on a</p> <p>17 full-term basis.</p> <p>18 BY MR. JEFFRIES:</p> <p>19 Q. So on the basis of the things you</p> <p>20 just mentioned, he was qualified for the</p> <p>21 position of being an associate at Davis</p> <p>22 Polk; correct?</p> <p>23 A. Based on the interview we had</p> <p>24 with him and his time as a summer</p> <p>25 associate, yes.</p>
<p style="text-align: right;">Page 255</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 Q. And on this particular document,</p> <p>3 again nowhere does it state that</p> <p>4 Mr. Cardwell received a negative review</p> <p>5 from anyone at the firm, correct, looking</p> <p>6 at the face of the document that's been</p> <p>7 produced in evidence?</p> <p>8 A. No, I disagree with that because</p> <p>9 the areas for improvement suggest he did</p> <p>10 not get a positive review and it could be</p> <p>11 viewed as a negative review, which is why</p> <p>12 these areas of constructive feedback,</p> <p>13 areas that he should work on sort of</p> <p>14 reflect that.</p> <p>15 Q. Is there any language on this</p> <p>16 review, aside from your interpretation of</p> <p>17 other documents which are not subject to</p> <p>18 this line of questioning, is there</p> <p>19 anything on this particular document that</p> <p>20 states -- is it written in any way that</p> <p>21 Mr. Cardwell should receive a midyear</p> <p>22 performance review?</p> <p>23 A. It doesn't say he should receive</p> <p>24 a midyear performance review, no.</p> <p>25 Q. We can take this down.</p>	<p style="text-align: right;">Page 257</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 Q. What were Mr. Cardwell's job</p> <p>3 responsibilities as an associate?</p> <p>4 A. As a first year, he would do the</p> <p>5 introductory basic work for corporate</p> <p>6 transactions. That could range from</p> <p>7 helping senior lawyers get a transaction</p> <p>8 to signing, it can help with closing</p> <p>9 documents, a lot of due diligence review,</p> <p>10 both on the buy side and sell side for</p> <p>11 various transactions, and just learning</p> <p>12 the basic blocking and tackling of the</p> <p>13 corporate transactions that you're working</p> <p>14 on.</p> <p>15 Q. Did Mr. Cardwell's job</p> <p>16 responsibilities ever change as an</p> <p>17 associate?</p> <p>18 A. Not significantly because the</p> <p>19 performance issues that we've been talking</p> <p>20 about held him back from taking on</p> <p>21 increasing senior roles and senior</p> <p>22 responsibilities over the time period that</p> <p>23 we've talked about.</p> <p>24 Q. You indicated not significantly,</p> <p>25 but did they change in any respect as he</p>

65 (Pages 254 - 257)



<p style="text-align: right;">Page 258</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 continued in his time as an associate at</p> <p>3 Davis Polk?</p> <p>4 A. Yes, he was given more advanced</p> <p>5 assignments to work on that he wouldn't</p> <p>6 have gotten as a first-year associate, so</p> <p>7 there was some evolution in terms of the</p> <p>8 work that he was being exposed to.</p> <p>9 Q. How long did Mr. Cardwell remain</p> <p>10 as an associate at Davis Polk?</p> <p>11 A. During the four-year period.</p> <p>12 Q. Did Mr. Cardwell's position</p> <p>13 change at any point during his employment?</p> <p>14 A. Change in what way?</p> <p>15 Q. Was he ever promoted from the</p> <p>16 position of associate or demoted in any</p> <p>17 way?</p> <p>18 A. No, the only change I can think</p> <p>19 of would be that he was told in February</p> <p>20 of 2018 that he should look for a new job</p> <p>21 and that he wouldn't be actively staffed</p> <p>22 on corporate transactions in the M&amp;A</p> <p>23 group. So he was still an associate,</p> <p>24 still getting paid but he's no longer</p> <p>25 working on transactions and his job is to</p>	<p style="text-align: right;">Page 260</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 evaluations of Mr. Cardwell personally?</p> <p>3 A. I gave him -- I sat down with him</p> <p>4 and did an interim review in June of 2016.</p> <p>5 Q. How did you evaluate</p> <p>6 Mr. Cardwell's performance?</p> <p>7 A. Exactly the way we discussed. I</p> <p>8 said I reviewed review files from the</p> <p>9 various lawyers, I've spoken to Sophia and</p> <p>10 going forward to succeed at Davis Polk,</p> <p>11 there was some key things he should focus</p> <p>12 on and work on, again responsiveness to</p> <p>13 other lawyers here and third parties,</p> <p>14 paying careful attention to details,</p> <p>15 meeting deadlines and improve the work</p> <p>16 product.</p> <p>17 <b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p>
<p style="text-align: right;">Page 259</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 look for a job.</p> <p>3 Q. How did Mr. Cardwell perform as</p> <p>4 an associate?</p> <p>5 A. Well, again, we flagged the</p> <p>6 issues. His critical issues were</p> <p>7 responsiveness, responding to e-mails,</p> <p>8 both from team members in Davis Polk and</p> <p>9 being reachable and not responding to</p> <p>10 clients and other third parties. Lack of</p> <p>11 care or attention to details during the</p> <p>12 work that he was doing. Not fully</p> <p>13 understanding the assignment which led to</p> <p>14 taking longer than would be expected for</p> <p>15 the particular assignment and thus not</p> <p>16 meeting deadlines, and then not</p> <p>17 understanding the transaction in full, not</p> <p>18 asking sufficient questions to inform</p> <p>19 himself that led to sometimes poor work</p> <p>20 product that needed to be redone by senior</p> <p>21 people supervising him. So those were</p> <p>22 issues that sort of were there from the</p> <p>23 get-go and continued throughout his tenure</p> <p>24 with Davis Polk.</p> <p>25 Q. Did you conduct performance</p>	<p style="text-align: right;">Page 261</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 <b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p> <p><b>REDACTED</b></p> <p>8 MR. JEFFRIES: I'm going off just</p> <p>9 for one moment.</p> <p>10 (Discussion off the record.)</p> <p>11 BY MR. JEFFRIES:</p> <p>12 Q. So what was the timing of those</p> <p>13 performance evaluations or of your</p> <p>14 performance evaluation with respect to</p> <p>15 Mr. Cardwell's complaints?</p> <p>16 MR. BIRENBOIM: Objection to</p> <p>17 form, no foundation for complaints.</p> <p>18 THE WITNESS: I'm not sure I</p> <p>19 understand the question. What was the</p> <p>20 timing of?</p> <p>21 BY MR. JEFFRIES:</p> <p>22 Q. What was the timing of the</p> <p>23 evaluation that you gave Mr. Cardwell in</p> <p>24 relation to the complaints that were made?</p> <p>25 MR. BIRENBOIM: Objection.</p>

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<p style="text-align: right;">Page 262</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 BY MR. JEFFRIES:</p> <p>3 Q. What was the time frame?</p> <p>4 A. Again, you mean his EEOC</p> <p>5 complaint and the New York State</p> <p>6 complaint, is that what you're talking</p> <p>7 about?</p> <p>8 Q. Well, I'm talking about the</p> <p>9 complaints that you mentioned that you had</p> <p>10 become aware of throughout the course of</p> <p>11 the litigation. You mentioned becoming</p> <p>12 aware of a complaint made to Sharon Crane,</p> <p>13 to the BAG group, to Mr. Goldberg, so --</p> <p>14 A. These individual complaints, not</p> <p>15 the legal complaints, is that correct, is</p> <p>16 my understanding correct? Those were</p> <p>17 all --</p> <p>18 MR. BIRENBOIM: Wait, objection</p> <p>19 to the form of the question. You may</p> <p>20 answer.</p> <p>21 THE WITNESS: My knowledge of</p> <p>22 those complaints all came after I gave</p> <p>23 my interim review to Kaloma.</p> <p>24 BY MR. JEFFRIES:</p> <p>25 Q. And again, how did your knowledge</p>	<p style="text-align: right;">Page 264</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 In particular, what I hadn't</p> <p>3 heard about before in particular was the</p> <p>4 performance in capital markets and that</p> <p>5 rotation from October of 2015 through</p> <p>6 April 1, 2016 that Sophia had talked to</p> <p>7 him about, associate development was aware</p> <p>8 of. So I was very concerned that these</p> <p>9 were some significant performance issues</p> <p>10 and wanted to get more information and</p> <p>11 talk to her about it.</p> <p>12 Q. During Mr. Cardwell's employment,</p> <p>13 did you ever wonder if any of</p> <p>14 Mr. Cardwell's performance reviews were</p> <p>15 impacted by his complaints?</p> <p>16 MR. BIRENBOIM: Objection to</p> <p>17 form, no foundation he knew about</p> <p>18 complaints before the legal papers</p> <p>19 were filed. You may answer.</p> <p>20 THE WITNESS: Because I wasn't</p> <p>21 aware of the complaints that you're</p> <p>22 talking about, it didn't impact my</p> <p>23 interim review.</p> <p>24 BY MR. JEFFRIES:</p> <p>25 Q. How did Mr. Cardwell's</p>
<p style="text-align: right;">Page 263</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 of those complaints come about?</p> <p>3 MR. BIRENBOIM: Objection, asked</p> <p>4 and answered. You can answer again if</p> <p>5 you wish.</p> <p>6 THE WITNESS: I learned through</p> <p>7 discussions at the management</p> <p>8 committee and outside counsel or</p> <p>9 general counsel's office in that time</p> <p>10 frame after the EEOC complaint.</p> <p>11 BY MR. JEFFRIES:</p> <p>12 Q. And you mentioned a review that</p> <p>13 you yourself had performed of</p> <p>14 Mr. Cardwell. Do you remember that?</p> <p>15 A. Yes.</p> <p>16 Q. How did that review come about?</p> <p>17 A. I think we talked about this</p> <p>18 before but I had a meeting with members of</p> <p>19 associate development in June where we</p> <p>20 were looking at professional development</p> <p>21 of Black American associates in the</p> <p>22 corporate department. There was a slide</p> <p>23 dedicated to Kaloma that flagged several</p> <p>24 issues that caught my attention. We had</p> <p>25 more discussion.</p>	<p style="text-align: right;">Page 265</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 performance compare to the performance of</p> <p>3 other employees in Mr. Cardwell's class?</p> <p>4 MR. BIRENBOIM: What time period?</p> <p>5 BY MR. JEFFRIES:</p> <p>6 Q. Well, relative to each period of</p> <p>7 time during which, Mr. Bick, you would</p> <p>8 have been evaluating him. So in relation</p> <p>9 to his class, how would you have assessed</p> <p>10 his performance in relation to his</p> <p>11 classmates?</p> <p>12 A. I think each reviewing lawyer</p> <p>13 that I looked at would have a slightly</p> <p>14 different assessment but I, looking at all</p> <p>15 of the reviews from the beginning that he</p> <p>16 had received, the submissions from all</p> <p>17 lawyers, I thought at this time I gave the</p> <p>18 interim review that he was performing at a</p> <p>19 level of below his peers in 2014. And it</p> <p>20 was he was still young and still</p> <p>21 developing and so he needed to focus on</p> <p>22 these issues and start to make corrections</p> <p>23 going forward so he wouldn't have this</p> <p>24 become worse over time.</p> <p>25 Q. Did anyone else have that opinion</p>

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<p style="text-align: right;">Page 270</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 between the two of you?</p> <p>3 A. I said that we would be giving</p> <p>4 him an assignment with a partner in the</p> <p>5 M&amp;A group and he would work on that</p> <p>6 assignment with that M&amp;A partner until it</p> <p>7 was completed. That M&amp;A partner would be</p> <p>8 spending time with him to make sure he</p> <p>9 understood the transaction. The partner</p> <p>10 would be paying attention to the issues</p> <p>11 that we had identified for improvement</p> <p>12 such as responsiveness, attention to</p> <p>13 details, meeting deadlines and doing good</p> <p>14 work.</p> <p>15 Once that assignment with the</p> <p>16 partner was completed, we would find</p> <p>17 another assignment and move on to the next</p> <p>18 one and continue to work on those issues,</p> <p>19 and that my goal was to find partners who</p> <p>20 were good hands-on teachers where he could</p> <p>21 learn a lot from them and they were</p> <p>22 willing to help him directly.</p> <p>23 Q. So it's your testimony that you</p> <p>24 told him it was a plan designed to improve</p> <p>25 his performance; is that correct?</p>	<p style="text-align: right;">Page 272</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 feedback to him on a very timely basis so</p> <p>3 he could continue to improve.</p> <p>4 Q. So is it your understanding that</p> <p>5 Mr. Cardwell's meeting with Tom Reid and</p> <p>6 Len Kreynin in March was related to his</p> <p>7 poor performance?</p> <p>8 MR. BIRENBOIM: Objection to</p> <p>9 form, mischaracterizes his testimony.</p> <p>10 THE WITNESS: No, I think the</p> <p>11 meeting in part was driven by his not</p> <p>12 getting a lot of work in the three- or</p> <p>13 four-month period we talked about at</p> <p>14 the end of 2016 and the first few</p> <p>15 months of 2017.</p> <p>16 BY MR. JEFFRIES:</p> <p>17 Q. And his complaint at the time;</p> <p>18 correct?</p> <p>19 MR. BIRENBOIM: Objection to</p> <p>20 form, mischaracterizes the record.</p> <p>21 THE WITNESS: I'm not aware of</p> <p>22 the complaint. In my mind it was</p> <p>23 driven by the lack of work.</p> <p>24 BY MR. JEFFRIES:</p> <p>25 Q. Well, Mr. Cardwell himself</p>
<p style="text-align: right;">Page 271</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 A. Just what I said, I think I</p> <p>3 explained what I told him.</p> <p>4 Q. With respect to what you said, is</p> <p>5 it your understanding the takeaway he</p> <p>6 would have had was that it was a plan to</p> <p>7 improve his performance, or did you at any</p> <p>8 point indicate to him that was the</p> <p>9 specific thrust of the work plan that you</p> <p>10 were explaining to him?</p> <p>11 A. Yes, I told him that he would be</p> <p>12 working with partners I thought were very</p> <p>13 good teachers, with young lawyers and they</p> <p>14 would be working with him directly so he</p> <p>15 wouldn't be working with I'll call it a</p> <p>16 senior lawyer between him and the partner.</p> <p>17 They would be paying attention and trying</p> <p>18 to give him -- review his work product,</p> <p>19 give him realtime feedback that he was</p> <p>20 very keen to get, and they knew about and</p> <p>21 would focus on the issues that we had</p> <p>22 alerted to him that he needed to be</p> <p>23 working on. So if they felt he was not</p> <p>24 being responsive or not paying attention</p> <p>25 to detail, they would try to give that</p>	<p style="text-align: right;">Page 273</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 certainly had opinions about why he wasn't</p> <p>3 getting work and those opinions were</p> <p>4 expressed in the meeting with Tom Reid and</p> <p>5 Len Kreynin; right?</p> <p>6 MR. BIRENBOIM: Objection to</p> <p>7 form.</p> <p>8 THE WITNESS: If you could be</p> <p>9 more clear about what his objections</p> <p>10 were based on, I could be maybe more</p> <p>11 responsive.</p> <p>12 BY MR. JEFFRIES:</p> <p>13 REDACTED</p> <p>14 REDACTED</p> <p>15 REDACTED</p> <p>16 REDACTED</p> <p>17 REDACTED</p> <p>18 REDACTED</p> <p>19 REDACTED</p> <p>20 REDACTED</p> <p>21 REDACTED</p> <p>22 REDACTED</p> <p>23 Q. Was Mr. Cardwell ever suspended</p> <p>24 from work at Davis Polk?</p> <p>25 A. Not to my knowledge.</p>

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2 BY MR. JEFFRIES:

3 Q. Based on what you know about

4 Mr. Cardwell's reviews, what processes did

5 the M&A partners follow in terms of

6 deciding which reviews should be given

7 more weight than others?

8 A. Again, based on my just answered

9 question he was discussed, it depends on

10 what time period. If you want to look at

11 2016, Len Kreynin was the reviewing

12 partner leading the discussion. He had

13 gathered up the written reviews and

14 summarized them for the group and there

15 was a discussion by the group. Again,

16 there's no formulaic weighting process.

17 Again, it's just a discussion here of the

18 issues Kaloma has and what message do we

19 want to give to him.

20 Q. Did Len Kreynin decide that

21 Mr. Cardwell should receive a midyear

22 review?

23 A. No, that's part of the consensus

24 review process, whether the associate,

25 based on the performance of feedback they

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2 are going to get and the particular

3 constructive feedback or goals we want to

4 see them working on, the group on a

5 consensus basis decides whether that

6 should be a midyear review. In 2016, the

7 consensus was that given these issues

8 regarding responsiveness, attention to

9 details, understanding assignments,

10 meeting deadlines and in some cases poor

11 work product, the consensus was that he

12 should be given a midyear review in 2017.

13 Q. During Mr. Cardwell's employment,

14 did you see any documents that stated that

15 Mr. Cardwell knew how he was performing?

16 A. Did I see any documents that he

17 knew? Other than that he received the

18 reviews with these people, with these

19 goals, so I would have thought that based

20 on the reviews that Bill Chudd gave to

21 him, that Sophia gave to him on capital

22 markets, that I did on the interim basis

23 and that Len gave him, in my mind he

24 should have had a pretty good idea of the

25 issues that he needed to work on to be

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2 successful at Davis Polk.

3 Q. Is Mr. Cardwell still employed at

4 Davis Polk?

5 A. He is not.

6 Q. And when was Mr. Cardwell

7 terminated?

8 A. I believe it was August of 2018.

9 Q. What's the earliest moment that

10 you thought Mr. Cardwell might be

11 terminated for poor performance?

12 MR. BIRENBOIM: Objection to

13 form. You may answer if you recall.

14 THE WITNESS: In fall of 2016 and

15 ultimately in obviously

16 January/February time frame of 2017.

17 BY MR. JEFFRIES:

18 Q. And why did you have that --

19 A. I'm sorry, the fall of 2017 and

20 January/February 2018.

21 Q. So not the fall of 2016; correct?

22 A. No, not before.

23 REDACTED

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REDACTED

19 BY MR. JEFFRIES:

20 Q. When was that decision -- when

21 were those discussions taking place, the

22 ones that led to the decision to terminate

23 Mr. Cardwell?

24 A. That would be in the

25 January/February time frame of 2018.



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2 Q. And ultimately who made the

3 decision to terminate Mr. Cardwell?

4 A. I think it was a group

5 discussion. It would be certainly

6 management committee because of the EEOC

7 complaint and focusing on impact of

8 termination on those proceedings, and then

9 also getting consensus from a handful of

10 people, staffing partners, Louis Goldberg,

11 Oliver, who had given him the reviews,

12 REDACTED

13 REDACTED

14 REDACTED

15 REDACTED

16 Q. With respect to specific

17 individuals, I heard you mention the

18 management committee, Goldberg and

19 staffing partners. So would that be

20 Harold Birnbaum; correct?

21 A. Yes, Harold and I believe Brian

22 Wolfe.

23 Q. And with respect to management

24 committee, would that conversation or

25 would that input related to terminating

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2 Mr. Cardwell have involved input from

3 Mr. Tom Reid?

4 A. Yes, it would have been Tom Reid

5 and Jim Rouhandeh.

6 Q. And what about any other M&A

7 partners, would there have been any other

8 M&A partners who he worked with that gave

9 input as to the decision to terminate

10 Mr. Cardwell?

11 A. Not to my recollection.

12 Q. How was the termination decision

13 communicated to Mr. Cardwell?

14 A. I believe Louis Goldberg, Oliver

15 Smith followed up on the official

16 performance review they gave him in

17 January with a follow-on message in

18 February.

19 REDACTED

20 REDACTED

21 REDACTED

22 REDACTED

23 REDACTED

24 REDACTED

25 REDACTED

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2 REDACTED

3 REDACTED

4 A. Yes, we have talked to other

5 lawyers and lawyers do get told by us that

6 based on performance, you need to look for

7 another job.

8 Q. Between 2014 and 2018, were any

9 other associates terminated for the same

10 reason as Mr. Cardwell, specifically

11 performance as you mentioned?

12 A. I don't have a specific list. I

13 couldn't give you names. I don't

14 recollect.

15 Q. Who would have that information,

16 who would have that list of other

17 associates that would have been terminated

18 during the years of 2014 and 2018 for the

19 same reason as Mr. Cardwell?

20 A. You'd have to look at their

21 written reviews where that message would

22 be delivered.

23 Q. So is that to say there's not an

24 individual that would have knowledge

25 related to those occurrences by virtue of

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2 their role within the firm?

3 A. Could you rephrase the question?

4 You said a lot there. I didn't follow it

5 all.

6 Q. Who can you think of that would

7 have knowledge of that list by virtue of

8 their role within the firm?

9 A. It's in the HR personnel files

10 for reviews. If the lawyer is given a

11 message that they need to go get a job and

12 leave the firm, that usually would be in

13 the review files as the message is given.

14 Q. So what steps normally precede

15 the firm terminating an associate for poor

16 performance?

17 A. No specific steps.

18 Q. How long is an associate

19 permitted to remain employed at the firm

20 following a negative performance review?

21 MR. BIRENBOIM: Objection to

22 form.

23 THE WITNESS: It depends on the

24 circumstances. It can vary but

25 generally the range would be three to

<p style="text-align: right;">Page 290</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 six months.</p> <p>3 BY MR. JEFFRIES:</p> <p>4 Q. How long is an associate</p> <p>5 permitted to remain employed at the firm</p> <p>6 following a performance review where they</p> <p>7 are rated as behind their peers?</p> <p>8 MR. BIRENBOIM: Objection to</p> <p>9 form, no foundation, mischaracterizes</p> <p>10 the record. You may answer.</p> <p>11 THE WITNESS: No difference.</p> <p>12 BY MR. JEFFRIES:</p> <p>13 Q. So that would again be three to</p> <p>14 six months; is that correct?</p> <p>15 A. Somewhere in that range, can be</p> <p>16 longer.</p> <p>17 Q. Are you aware of associates</p> <p>18 remaining employed at the firm despite</p> <p>19 receiving multiple negative reviews in a</p> <p>20 prior review period?</p> <p>21 A. I'd have to look at the</p> <p>22 individual cases. I can't remember</p> <p>23 specific cases.</p> <p>24 Q. Well, is this something that you</p> <p>25 have a personal awareness of ever</p>	<p style="text-align: right;">Page 292</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 Mr. Cardwell a midyear review in June of</p> <p>3 2016?</p> <p>4 A. He didn't get a midyear review.</p> <p>5 Q. So your testimony is that</p> <p>6 Mr. Cardwell did not receive a midyear</p> <p>7 review in 2016?</p> <p>8 A. I view it as an interim review.</p> <p>9 In the fall of 2015 he was not told he was</p> <p>10 going to be given a midyear review, which</p> <p>11 is I think is a term of art, that says in</p> <p>12 connection with your annual review, here</p> <p>13 are the performance issues we want you to</p> <p>14 work on and we're going to touch base six</p> <p>15 months later in a midyear review around</p> <p>16 May or June.</p> <p>17 The interim review I gave to</p> <p>18 Kaloma was based on the information I got</p> <p>19 in my meeting with associate development</p> <p>20 in June and it caused me great concern. I</p> <p>21 did talk to Sophia, I asked for review</p> <p>22 forms to be filled by people who had</p> <p>23 worked with him recently. And then based</p> <p>24 on all of that, I thought it was important</p> <p>25 to sit down and give him that input. I</p>
<p style="text-align: right;">Page 291</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 happening?</p> <p>3 A. People have gotten negative</p> <p>4 reviews in the sense that they have to</p> <p>5 work on specific areas and remain</p> <p>6 employed, so yes.</p> <p>7 Q. Are you aware of associates</p> <p>8 remaining employed at the firm despite</p> <p>9 receiving behind ratings in performance</p> <p>10 reviews in a prior review period?</p> <p>11 MR. BIRENBOIM: Objection to</p> <p>12 form.</p> <p>13 THE WITNESS: Again, I don't have</p> <p>14 any details.</p> <p>15 BY MR. JEFFRIES:</p> <p>16 Q. Are there any</p> <p>17 nonperformance-based reviews -- excuse me,</p> <p>18 are there any nonperformance-based reasons</p> <p>19 that can contribute to an associate being</p> <p>20 rated behind other associates in their</p> <p>21 class?</p> <p>22 A. Not to my knowledge. It's all</p> <p>23 based on performance relative to other</p> <p>24 members in their class.</p> <p>25 Q. Who made the decision to give</p>	<p style="text-align: right;">Page 293</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 know that he wanted realtime feedback and</p> <p>3 <b>REDACTED</b></p> <p>4 <b>REDACTED</b></p> <p>5 <b>REDACTED</b></p> <p>6 <b>REDACTED</b></p> <p>7 <b>REDACTED</b></p> <p>8 <b>REDACTED</b></p> <p>9 <b>REDACTED</b></p> <p>10 <b>REDACTED</b></p> <p>11 <b>REDACTED</b></p> <p>12 <b>REDACTED</b></p> <p>13 <b>REDACTED</b>.</p> <p>14 Q. Are you aware of Sophia Hudson</p> <p>15 giving Mr. Cardwell a review?</p> <p>16 A. Yes, not a formal written review</p> <p>17 in the February time frame. She sat down</p> <p>18 and spoke to him and gave him very</p> <p>19 concrete feedback about her experience</p> <p>20 working with him and the issues he needed</p> <p>21 to focus on.</p> <p>22 Q. Are you aware of her giving him a</p> <p>23 review in 2016 at any time?</p> <p>24 A. Yes, we just talked about that.</p> <p>25 At the end of his capital markets</p>



<p style="text-align: right;">Page 314</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 feedback. So in some cases maybe the</p> <p>3 performance is very poor. In some</p> <p>4 cases it's a very good associate, they</p> <p>5 just need to work on a particular area</p> <p>6 and we want to see progress. Some</p> <p>7 people might view it as stigma.</p> <p>8 Others, I don't think they do. It's</p> <p>9 all part of the review process.</p> <p>10 BY MR. JEFFRIES:</p> <p>11 Q. And again, it's your testimony</p> <p>12 that Mr. Cardwell asked the associate</p> <p>13 development department for midyear</p> <p>14 feedback; correct?</p> <p>15 A. That is not my testimony. My</p> <p>16 testimony is Kaloma asked for regular</p> <p>17 realtime review on his work. And so this</p> <p>18 review, this interim review I'm giving him</p> <p>19 in June because again it's not part of the</p> <p>20 annual review process. I didn't sit down</p> <p>21 with the entire M&amp;A group and review all</p> <p>22 of these issues to deliver the group</p> <p>23 consensus message that we've talked about</p> <p>24 during the annual review process. It was</p> <p>25 just an interim review and it had two</p>	<p style="text-align: right;">Page 316</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 improvements so by the time he gets to the</p> <p>3 fall review, people could see that he's</p> <p>4 working on each of these issues and see</p> <p>5 continued improvement that some people saw</p> <p>6 here.</p> <p>7 Q. When the firm decided to</p> <p>8 terminate Mr. Cardwell, did they factor in</p> <p>9 the June 2016 review, reviews rather?</p> <p>10 A. I don't think so. I mean in the</p> <p>11 sense that we knew that he had performance</p> <p>12 issues from when he started, but I think</p> <p>13 in the times where we're taking a</p> <p>14 determination not to continue with him and</p> <p>15 that message in February to look for a new</p> <p>16 job, that's more influenced by the work we</p> <p>17 had done with him starting in May of 2017.</p> <p>18 Obviously, at a level prior</p> <p>19 performance is a factor, we're aware of</p> <p>20 that, but we're looking at is he making</p> <p>21 any significant improvement in 2017 to be</p> <p>22 operating as a third or fourth year</p> <p>23 associate. And as a practical matter, we</p> <p>24 didn't see any significant improvement and</p> <p>25 ultimately that's what led us to the</p>
<p style="text-align: right;">Page 315</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 purposes. One, to go over again what</p> <p>3 Sophia had talked about because there were</p> <p>4 some serious performance issues and I</p> <p>5 wanted to make sure he took them seriously</p> <p>6 and worked on them as they are summarized</p> <p>7 here; and two, I wanted to make sure I had</p> <p>8 realtime review and input from the M&amp;A</p> <p>9 lawyers that he was working for starting</p> <p>10 in April, May and early June. And it was</p> <p>11 good that I did because John Amorosi had</p> <p>12 had a good experience, Laura Turano had a</p> <p>13 good experience and that was very helpful.</p> <p>14 And I communicated to him and said that's</p> <p>15 what he needs to do and that's what he</p> <p>16 needs to accomplish, continue to do that.</p> <p>17 And again as I said earlier, a lot of</p> <p>18 these issues regarding responsiveness,</p> <p>19 carefulness, attention to details,</p> <p>20 understanding the transaction, meeting</p> <p>21 deadlines, I believe those all to be</p> <p>22 within his control. If he focused on them</p> <p>23 and if he worked on them, he could improve</p> <p>24 on each of those issues, so it was better</p> <p>25 that he start to focus on them and make</p>	<p style="text-align: right;">Page 317</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 decision to terminate him because he's now</p> <p>3 a rising fourth-year associate.</p> <p>4 <b>REDACTED</b></p> <p>5 <b>REDACTED</b></p> <p>6 <b>REDACTED</b></p> <p>7 <b>REDACTED</b></p> <p>8 <b>REDACTED</b></p> <p>9 <b>REDACTED</b></p> <p>10 <b>REDACTED</b></p> <p>11 <b>REDACTED</b></p> <p>12 <b>REDACTED</b></p> <p>13 <b>REDACTED</b></p> <p>14 <b>REDACTED</b></p> <p>15 <b>REDACTED</b></p> <p>16 <b>REDACTED</b></p> <p>17 MR. JEFFRIES: Let's turn to tab</p> <p>18 14 at this point in time. You can</p> <p>19 take this down, Zach.</p> <p>20 (Exhibit 17, document Bates</p> <p>21 labeled DPW_SDNY-000140827, marked for</p> <p>22 identification.)</p> <p>23 MR. JEFFRIES: Can you enlarge</p> <p>24 this a bit?</p> <p>25 MR. BIRENBOIM: Zach, can you</p>

<p>Page 326</p> <p>1 BICK 2 M&amp;A lawyers who were working with him 3 because based on his prior discussions 4 asking for realtime feedback, I'm sure 5 he'd say what do people think about and I 6 would be remiss not to have an answer when 7 he asked that question if I said I didn't 8 get any feedback, I don't know. That 9 would have been a wrong outcome. 10 REDACTED</p>	<p>Page 328</p> <p>1 BICK 2 REDACTED</p>
<p>Page 327</p> <p>1 BICK 2 REDACTED</p>	<p>Page 329</p> <p>1 BICK 2 REDACTED</p> <p>that he needs to focus on to improve. (Continued on next page.)</p>